

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION  
4                   IN RE:    NATIONAL                   :   MDL No. 2804  
5                   PRESCRIPTION OPIATE               :     
6                   LITIGATION                         :   Case No. 17-md-2804  
7   :     
8                   APPLIES TO ALL CASES               :   Hon. Dan A. Polster  
9   :     
10    :   

8 HIGHLY CONFIDENTIAL

9 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

11 - - - -  
12 JANUARY 25, 2019  
13 - - - -

14 VIDEOTAPED DEPOSITION OF ROBERT A. MCCLUNE,  
15 taken pursuant to notice, was held at Marcus &  
16 Shapira, One Oxford Center, 35th Floor, Pittsburgh,  
17 Pennsylvania 15219, by and before Ann Medis,  
18 Registered Professional Reporter and Notary Public in  
19 and for the Commonwealth of Pennsylvania, on Friday,  
20 January 25, 2019, commencing at 9:11 a.m.

21 - - - -  
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1 P R O C E E D I N G S

2 - - - -

3 THE VIDEOGRAPHER: We are now on the  
4 record. Today's date is January 25, 2019, and the  
5 time is approximately 9:11 a.m.

6 This is the videotaped deposition of Robert  
7 McClune in the National Prescription Opiate  
8 Litigation.

9 All counsel and parties present will be noted  
10 on the stenographic record.

11 Will the court reporter please swear in the  
12 witness.

13 ROBERT A. MCCLUNE,  
14 having been first duly sworn, was examined  
15 and testified as follows:

16 EXAMINATION

17 BY MR. BARTON:

18 Q. Mr. McClune, my name is Eric Barton.  
19 I'm here from Wagstaff & Cartmell in Kansas City.  
20 We met just before the deposition; correct?

21 A. Correct.

22 Q. Would you go ahead and -- just a  
23 formality -- but state your full name for the  
24 record again, please.

25 A. Sure. It's Robert Anthony McClune.

1 Q. Thank you. I'm going to have a number  
2 of questions for you today.

3 You understand you're here to have your  
4 deposition taken in a case that is pending in the  
5 Northern District of Ohio by plaintiffs, cities,  
6 and counties, against a number of companies,  
7 including HBC, arising out of the opioid epidemic?

8 A. Yes.

9 Q. You understand that's why you're here  
10 today?

11 A. Yes.

12 Q. Have you ever had your deposition taken  
13 before?

14 A. I've had a deposition before, yes.

15 Q. And when was -- when was that?

16 A. Last deposition, two years ago, roughly.

17 Q. Okay.

18 A. Not for this case.

19 Q. So you've been deposed more than one  
20 time?

21 A. I had one formal. The other one, I  
22 don't think it would count as a deposition. So  
23 just one; just one.

24 Q. And how about testifying in trials?  
25 Have you ever actually testified in a courtroom,



1 in a trial, for any reason?

2 A. No.

3 Q. The deposition, if you don't mind me  
4 asking, I don't need you to get into real details  
5 of it, but what was the nature of the case in  
6 which you have previously given a deposition?

7 A. It was an antitrust case.

8 Q. And you say that was about two years  
9 ago?

10 A. Yes.

11 Q. Do you know what court that case was  
12 pending in?

13 A. I do not.

14 Q. Were you deposed as an employee or  
15 representative of Giant Eagle?

16 A. Yes.

17 Q. Were you represented at that deposition  
18 by this same law firm, Marcus & Shapira?

19 A. Yes.

20 Q. Do you remember any of the parties  
21 involved in that case other than Giant Eagle?

22 Do you remember the names of anyone else  
23 involved? The defendants?

24 A. By "defendants," you mean the  
25 manufacturers that would be associated in the

1 case?

2 Q. I guess, yes, if there were  
3 manufacturers involved, yes.

4 A. AbbVie and Teva Pharmaceuticals.

5 Q. So it was an antitrust case involving  
6 pharmaceuticals?

7 A. Yes.

8 Q. So you've been through this process  
9 before, so we don't have to belabor too much of  
10 the rules of the road. But let me just ask you a  
11 few, again, just to make sure we have the same  
12 understanding.

13 You do understand you are under oath today,  
14 just as if you were testifying in a courtroom at  
15 trial; correct?

16 A. Yes.

17 Q. And you understand that this deposition  
18 is being videotaped in the event that there may be  
19 a trial, and you may not be required to appear  
20 personally at that trial, but your testimony today  
21 could be used as some of the testimony to be  
22 played at that trial?

23 A. Yes.

24 Q. If today I ask you a question that you  
25 don't understand, would you please feel free to

1 tell me so and I will phrase it?

2 A. Yes. No problem.

3 Q. And as we get going, if you fail to give  
4 like an audible answer, a "yes" or a "no," and  
5 instead just nod your head or say "uh-huh," I  
6 might ask for a clarification for the sake of our  
7 written record.

8 Is that okay?

9 A. Yes. I'll do my best.

10 Q. Generally, and I'm not asking you to  
11 reveal any, you know, actual communications,  
12 conversations that you've had with your lawyers  
13 here today, but what did you do generally to  
14 prepare for this deposition today?

15 A. I've worked for Giant Eagle for ten  
16 years and in preparation for this case reviewed  
17 relevant case materials that would possibly come  
18 up as part of this deposition.

19 Q. And case materials, for example -- I'll  
20 just ask you a few specifics just to see.

21 Did you review any of the actual what we call  
22 pleadings, the complaint, what the case alleges,  
23 or any of those types of documents that have been  
24 filed in court?

25 MR. KOBRIN: I'm going to object. I

1 mean, I'm okay with you asking him -- objection.

2 I'm okay with you asking him about whether he  
3 looked at documents, but I don't want you doing a  
4 line of inquiry that's going to essentially reveal  
5 whatever we showed him, because I think that's  
6 work product.

7 MR. BARTON: That's fine. I think we  
8 can just take that as it goes, but I'm only asking  
9 just a general sense of what he looked at.

10 I'm not going to try to have him tell me  
11 every single document --

12 MR. KOBRIN: Yeah. If you're trying to  
13 narrow it down by asking the areas of documents  
14 and the types of documents, I think that would be  
15 inappropriate.

16 MR. BARTON: I think I'm keeping it to  
17 categories is my goal.

18 BY MR. BARTON:

19 Q. But just categorically, did you review  
20 any of the pleadings in the case?

21 A. Early on, yes.

22 Q. And I assume you might have gone back  
23 and looked at emails that you were involved in,  
24 you know, that may have pertained to the time  
25 period relevant to the case?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: Yes.

3 BY MR. BARTON:

4 Q. Have you, other than -- well, I assume  
5 you met with your attorneys to prepare for the  
6 deposition before today?

7 A. Yes.

8 Q. About how long did you spend preparing  
9 with them?

10 A. Since HBC was added to the case.

11 MR. KOBRIN: Do you mean in general or  
12 yesterday?

13 MR. BARTON: I guess all total.

14 BY MR. BARTON:

15 Q. You met maybe perhaps more than one time  
16 with counsel to prepare for the deposition?

17 MR. KOBRIN: To prepare for the  
18 deposition.

19 THE WITNESS: I met yesterday to prepare  
20 for the deposition eight to ten hours.

21 BY MR. BARTON:

22 Q. Other than meeting with counsel, have  
23 you spoken with others to help you prepare for the  
24 deposition? "Others" meaning other employees of  
25 Giant Eagle first.

1 A. Yes. We've spoken about the case.

2 Q. Other people have been deposed. And so  
3 maybe you've spoken with others who had their  
4 depositions taken.

5 MR. KOBRIN: You're talking about just  
6 in preparation for the deposition?

7 MR. BARTON: Correct.

8 THE WITNESS: Yes.

9 BY MR. BARTON:

10 Q. Who have you spoken to just in  
11 preparation for this deposition in terms of other  
12 employees at Giant Eagle?

13 A. Can you restate that question.

14 Q. Yeah. What other employees of Giant  
15 Eagle have you spoken to in preparation for your  
16 deposition today?

17 A. George Chunderlik, Jim Tsipakis, Mike  
18 Bianco, Fred Bencivengo. Just others that would  
19 be involved with this case.

20 Q. In terms of any of those conversations  
21 you've had with them that have not been in the  
22 presence of counsel, that have not been during a,  
23 you know, prep session at which counsel was  
24 present, have you had those conversations just in  
25 the hallway?

1                   MR. KOBRIN: I object to that. I don't  
2    want him to get the impression that just because  
3    counsel was not present in person during  
4    conversations where he's preparing for his  
5    deposition that it's not privileged.

6                   If it was at the direction of counsel or we  
7    were involved in any way, I think that's still  
8    privileged. So I still don't want him getting  
9    into the nature of those preparatory  
10   conversations.

11                  MR. BARTON: Okay.

12   BY MR. BARTON:

13                 Q. I don't want you to reveal anything that  
14   you may have talked about with George Chunderlik  
15   or Mike Bianco that is advice or communications  
16   you've had with counsel, relaying to each other  
17   things that you've spoken about with counsel. I'm  
18   putting that aside.

19                 I'm just getting a sense for what subjects  
20   have you talked with them about in preparation for  
21   your deposition.

22                 A. Most of our conversations were with  
23   counsel present, not to say there haven't been  
24   cases where there haven't been. Most of it was  
25   just rehashing --

1 MR. KOBRIN: Don't get into the content  
2 of the conversation. Just the fact that we were  
3 present means it's privileged.

4 MR. BARTON: Well, I think the subjects  
5 are okay, just subject matter.

6 MR. KOBRIN: No. I'd rather he not talk  
7 about subject matter. I think that's work product  
8 and confidential privileged communications.

9 MR. BARTON: Well, we'll move on. I  
10 disagree, but we'll move on from that right now.

11 BY MR. BARTON:

12 Q. So other than other employees of Giant  
13 Eagle, is there anyone else who you may have  
14 spoken with in preparation for the deposition?

15 A. No.

16 (HBC-McClune Exhibit 1 was marked.)

17 BY MR. BARTON:

18 Q. I'm going to hand you what we've marked  
19 as Exhibit 1. It's P-GEN 128.

20 I'll represent to you that we have, I  
21 believe, printed this from LinkedIn. And it  
22 appears to be a profile that you can download in  
23 PDF from LinkedIn that summarizes your work and  
24 educational background.

25 Is that true?



1           A.     Yes.   Based on my review, it does look  
2     like it came from LinkedIn.

3           Q.     And what is LinkedIn?

4           MR. KOBRIN:   Object to form.

5           THE WITNESS:   An online social media  
6     site more for business networking.

7     BY MR. BARTON:

8           Q.     You're familiar with LinkedIn as a  
9     social media platform, whatever it is?

10          A.     Yes.

11          Q.     Is this Exhibit 1 content that you  
12     provided to LinkedIn to create or maintain your  
13     profile on LinkedIn?

14          A.     I've not read this document verbatim,  
15     but it does appear to be information that I  
16     updated online and posted.

17          Q.     And that's my question.   At some point  
18     in time, this is content that you likely provided  
19     as opposed to somebody -- some other third party  
20     providing content?

21          A.     Yes.   That's correct.

22          Q.     Well, I just want to walk through some  
23     of the history here, your employment background,  
24     educational background, starting with -- I noted  
25     that you graduated from Beaver Area Senior High

1 School in 1997; correct?

2 A. That is correct.

3 Q. Beaver, Pennsylvania, kind of between  
4 here and Youngstown?

5 A. That's correct.

6 Q. And those are the Beaver Bobcats?

7 A. That's also correct.

8 Q. And I wonder why they weren't called the  
9 Beaver Beavers.

10 A. Yeah. It's a good question. I think  
11 there are other neighboring schools that use that  
12 as a mascot.

13 Q. At Penn State, you list a bachelor of  
14 science, but what did you get your degree in?

15 A. My undergrad is in advertising.

16 Q. Did you have any computer or information  
17 systems kind of coursework or studies in college?

18 A. Yes. A lot of my coursework was built  
19 around analytics, advertising analytics.

20 Q. So that was part of your advertising  
21 degree, I guess?

22 A. Yes.

23 Q. Have you taken any graduate school of  
24 any kind?

25 A. I took one postgrad programming class at

1 Penn State. I don't have it listed on there.

2 Q. And was that programming in any, you  
3 know, kind of particular language or --

4 A. SQL.

5 Q. And SQL, is that -- I won't be very  
6 precise in some of the technical questions. But  
7 is that kind of a database language --

8 A. Yes.

9 Q. -- for lack of a better word?

10 A. Standard query language, yes.

11 Q. Standard query language. That's what  
12 SQL stands for?

13 A. Yes.

14 Q. Do people sometimes say SQL instead of  
15 SQL?

16 A. Yes.

17 Q. So that is -- well, describe for me,  
18 since you know more about it than I do, what is  
19 the function of SQL?

20 A. It's a language that allows you to merge  
21 together and run reports, analytics, calculations  
22 against standard structure database, so a  
23 relational database.

24 Q. Relational database is a good way to put  
25 it perhaps as just a broad category?

1 A. Yeah.

2 Q. So other than that, that postgraduate  
3 class in the SQL language, have you had any other  
4 formal technical training past your undergraduate  
5 degree?

6 A. No.

7 Q. I want to flip to what's on page 4.  
8 Just noting that you went to work in August 2004  
9 for AstraZeneca; correct?

10 A. Yes.

11 Q. And worked for, it looks like, about a  
12 year and a half as a marketing representative;  
13 correct?

14 A. Yes.

15 Q. Was this job your first experience  
16 working in the pharmaceutical industry?

17 A. Yes.

18 Q. And as part -- I know the first bullet  
19 point that you list there describing some of your  
20 job responsibilities says, "Conducted and designed  
21 marketing programs targeting physicians for  
22 products including Nexium and Crestor."

23 Do you see that?

24 A. Yes.

25 Q. That's one thing you did for

1 AstraZeneca?

2 A. Yes.

3 Q. Did you learn through the experience of  
4 working for AstraZeneca that the prescribing  
5 habits and choices of individual physicians have a  
6 significant impact on how much of any one drug or  
7 class of drug is sold?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: Can you repeat that  
10 question.

11 BY MR. BARTON:

12 Q. Yeah. It probably wasn't very well  
13 said.

14 Did you learn through your experience with  
15 AstraZeneca, your first job in the pharmaceutical  
16 industry, that the individual prescribing habits  
17 or practices of physicians can have a significant  
18 impact on the quantity of any given drug being  
19 sold?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: Being that I wasn't  
22 directly involved with the sales team, I'm not  
23 sure of the influence. But our programs were  
24 designed to provide information to doctors so they  
25 can make a more educated decision.

1 BY MR. BARTON:

2 Q. With the end goal of the company being  
3 to sell the drugs that the company makes to sell;  
4 correct?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: I suppose that's correct.

7 BY MR. BARTON:

8 Q. Nexium and Crestor, those are -- are  
9 those controlled substances? Like, are they  
10 Schedule anything controlled substances?

11 A. From a DEA perspective non-schedule, but  
12 Schedule VI technically.

13 Q. Right. Nexium, is that -- that's like a  
14 reflux medication?

15 A. Yes.

16 Q. And Crestor, is that a cholesterol  
17 medication, lowering your cholesterol?

18 A. Yes.

19 Q. At any time, when working for  
20 AstraZeneca, were you involved in marketing any  
21 Schedule II or III controlled substances?

22 MR. KOBRIN: I just want to object to  
23 form.

24 How far do you think you're going to go down  
25 the path on AstraZeneca? Because I may want to

1 talk to the client at some point just to make sure  
2 that we're not breaching any kind of  
3 confidentiality here.

4 MR. BARTON: Not very far. I'm asking  
5 basically the question I just asked, and that's  
6 probably about it.

7 MR. KOBRIN: Okay.

8 BY MR. BARTON:

9 Q. Did you ever sell -- did you ever help  
10 market any opioid pain medications for  
11 AstraZeneca?

12 A. No.

13 Q. Or any other controlled substances that  
14 you recall?

15 A. No.

16 Q. All right. Your next position it  
17 appears was with an entity called IMS Health;  
18 correct?

19 A. Yes.

20 Q. How would you describe the business of  
21 IMS Health at the time that you worked for them?

22 A. IMS Health is a major data provider for  
23 the pharmaceutical industry. There were many  
24 aspects of the business that I was not intimately  
25 involved with.

1           My group worked on Rx database management,  
2   working with retailers, bringing that information  
3   into a database, and then selling that information  
4   back out to manufacturers.

5           Q.    Is IMS Health based in Pittsburgh?

6           A.    No.

7           Q.    Where are they headquartered?

8           A.    I'm not a hundred percent -- I think  
9   they're using Stamford, Connecticut as their  
10   headquarters right now. I was based out of  
11   Plymouth Meeting, Pennsylvania, just outside of  
12   Philadelphia.

13          Q.    And your position you described as  
14   business analyst. And you just described a little  
15   bit about what the company did; correct?

16          A.    Yes.

17          Q.    Can you tell me just what your -- in  
18   general, describe what you did for IMS Health at  
19   that time.

20          A.    Yes. I worked with the retailers to  
21   make sure their data came into our repository, the  
22   data was in line with our projected or imputed  
23   expectations.

24                Once we qualified that data, we married it  
25   into our larger database that drove deliverables



1 out to the manufacturing community.

2 Q. So if I understand what you're saying,  
3 one of the things that IMS Health did, and maybe  
4 still does, is to collect sales transactional data  
5 from retailers about their sales of prescription  
6 drugs; correct?

7 A. Yes.

8 Q. And then it collects that information  
9 from a number of different retailers; right?

10 A. Yes.

11 Q. And then it will combine all that data  
12 into a larger database so that it can evaluate  
13 larger trends and get a bigger picture of what's  
14 going on than just any one retailer might see from  
15 their own data?

16 MR. KOBRIN: Object to form.

17 BY MR. BARTON:

18 Q. Is that one of the purposes of doing  
19 that?

20 A. Yes.

21 Q. And so the retailers can, I assume,  
22 subscribe or enter into a relationship of some  
23 kind with IMS Health to be able to provide their  
24 data and, in return, get access to the analytics  
25 and the analysis of the larger data that IMS

1 Health may use; correct?

2 A. At this point in time when I was with  
3 IMS, the deliverables were mainly manufacturer  
4 focused.

5 Q. And so the deliverables, meaning the  
6 output of IMS from the analysis that it did of  
7 whatever data they got.

8 A. Yes.

9 Q. That's what you mean by "deliverables"?

10 A. Correct.

11 Q. And so they were -- their customers were  
12 manufacturers who were interested in knowing what  
13 all of the retailer data looked like?

14 A. Yes.

15 Q. One of the bullet points on the IMS  
16 Health position I just wanted to ask you about, it  
17 looks like it's five bullet points down, but you  
18 say -- one of the things that you've listed there  
19 was to build an Excel-based analytical tool used  
20 by the entire department for processing and  
21 comparing data in parallelling systems during the  
22 migration from a mainframe system to an Oracle  
23 database system.

24 Did I read that correctly?

25 A. Yes.

1           Q.    The Excel-based analytical tool, I just  
2    want to ask, is that a reference -- you're using a  
3    lower case E there, but is that a reference to  
4    Microsoft Excel?

5           A.    Yes.

6           Q.    And Microsoft Excel is a program that is  
7    part of the Microsoft Office suite that a lot of  
8    people have on their computers?

9           A.    Yes.

10          Q.    And that was true -- "that" being that  
11   Microsoft Excel was part of the Microsoft Office  
12   package, that was true back in 2006, 2007;  
13   correct?

14          A.    Yes.

15          Q.    I remember it. I even remember way back  
16   then.

17          Was this job at IMS Health your first  
18   full-time job that focused on data analytics  
19   specifically in the pharmaceutical industry?

20          A.    Yes.

21          Q.    And that was maybe the change from  
22   AstraZeneca to IMS Health, is you really started  
23   to get into data analytics with IMS Health?

24               MR. KOBRIN: Object to form.

25               THE WITNESS: Yes. I did less analytics

1 at AstraZeneca than I did at IMS.

2 BY MR. BARTON:

3 Q. While you were at IMS Health, did you  
4 meet or come into contact with people from Giant  
5 Eagle?

6 A. No. Giant Eagle was not a data provider  
7 to IMS at that point in time.

8 Q. That's why I asked. Because we actually  
9 have some emails where we see that Giant Eagle did  
10 provide data to IMS later in time.

11 And that's why I just wondered if that was a  
12 connection of how you got to Giant Eagle, but --

13 A. No, it's not.

14 Q. -- we'll get there. We'll get there.  
15 Okay. I just wondered.

16 A. I'm from here. That's how.

17 Q. Okay. Very good.

18 A. Just fast-forward.

19 Q. You're from Beaver.

20 A. Close enough.

21 Q. Before I leave it, I realize this is  
22 kind of elementary to you. But a lot of people  
23 are, at least in my world, pretty familiar with  
24 Microsoft Word, word processing program, and maybe  
25 fewer people in my world are as familiar with

1 Microsoft Excel and what it does and what it can  
2 do.

3 Can you just describe generally for us what  
4 Microsoft Excel is to you?

5 MR. KOBRIN: Object to form.

6 To the extent that you know.

7 BY MR. BARTON:

8 Q. Just describe what -- what does it do?

9 A. It's a spreadsheet application that is  
10 used to organize data and information for business  
11 or personal or whatever use.

12 Q. So within Microsoft Excel you can enter  
13 a lot of data and organize it, as you said;  
14 correct?

15 A. Yes.

16 Q. And is it also possible within Microsoft  
17 Excel to create formulas or sort data in ways that  
18 you can, you know, compare one dataset to another  
19 dataset, for example?

20 A. Yes.

21 Q. So if you know how to manipulate  
22 Microsoft Excel, it is a software program that  
23 allows you to create and do certain things with  
24 data in a database; true?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: Yes.

2 BY MR. BARTON:

3 Q. Would you agree, I guess, that Microsoft  
4 Excel is one kind of tool for data analytics?

5 A. Yes.

6 Q. Just moving up your job history here, it  
7 appears you then moved from IMS Health initially  
8 to the Nielsen Company; correct?

9 A. Yes.

10 Q. And that job looks like it wasn't really  
11 focused in the pharmaceutical industry. Is that  
12 true?

13 A. That is true.

14 Q. And then the next position -- you were  
15 there until July 2008 at the Nielsen Company. And  
16 then in July 2008, it appears that you became a  
17 business analyst and a senior pharmacy business  
18 analyst. And that was for Giant Eagle; correct?

19 A. Yes.

20 Q. So you started employment with Giant  
21 Eagle in approximately July 2008?

22 A. Yes.

23 Q. How did you come to be hired by Giant  
24 Eagle?

25 A. How much history do you want?

1           Q.    Well, I know you lived in Beaver, and I  
2   know you're from here.

3           But I guess I was just curious if you had a  
4   specific connection to a person here or just what  
5   happened.

6           A.    No.   The Nielsen Company, the position  
7   was here in Pittsburgh.  My job was transferred to  
8   San Francisco, and I did not want to move.  So I  
9   put my résumé out there, applied for positions at  
10   Giant Eagle, and was contacted by HR for an  
11   interview.

12          Q.    Well, it would appear that the job  
13   description, as you provided it here on your  
14   profile, the kinds of things you did, it appears  
15   like it was a pretty good fit for some of the  
16   experience you already developed with IMS Health  
17   and before; correct?

18          A.    I would agree with your opinion.

19          Q.    So in your position as a business  
20   analyst and senior pharmacy business analyst --  
21   well, first of all, are those two different titles  
22   that you held during that two-year form of  
23   timeframe?

24          A.    Yes.  And just to help, as you progress  
25   through this, I've lumped -- sometimes I'm in the

1     role and promoted pretty much doing the same  
2     function.

3             I've, in this breakdown, lumped those  
4     together. So you'll see that maybe more than once  
5     as we continue through. I haven't fully reviewed  
6     what I have on here because I don't update it that  
7     often.

8             Q.     So that's how I read it and assumed that  
9     was true, that those were two different titles,  
10    but the kind of description of what you did below  
11    that is relatively applicable to that whole  
12    timeframe when you held a couple of different  
13    titles; correct?

14            A.     Yes. That's correct.

15            Q.     So can you tell me, if you remember,  
16    where in the organizational chart for Giant Eagle,  
17    where did the -- obviously, you were in the  
18    pharmacy side of the business; correct?

19                   MR. KOBRIN: Object to form.

20    BY MR. BARTON:

21            Q.     Let me just try to narrow it down.

22                   I'm just trying to figure out where this fell  
23    organizationally, and let me just ask more  
24    specific questions.

25                   Did you have someone you reported to in that



1 position?

2 A. Yes.

3 Q. Who was that?

4 A. Sean Raynak.

5 Q. What was Sean Raynak's position?

6 A. He was -- I may not have the title  
7 exactly right because it's been ten years now --  
8 manager of pharmacy finance.

9 Q. Do you know who Sean Raynak reported to  
10 at that time?

11 A. I believe he reported directly to Randy  
12 Heiser.

13 Q. Who was?

14 A. The VP of pharmacy at that point in  
15 time.

16 Q. Thanks. Did you, in turn, at this point  
17 in time -- from July of 2008 to October of 2010,  
18 do you recall, did you have people under you or  
19 who worked for you and who reported to you?

20 A. No.

21 Q. Were you part of a team of business  
22 analysts or senior pharmacy business analysts who  
23 reported to --

24 A. Sean Raynak?

25 Q. Sean, yeah. I'm sorry.

1           A.     It was a team of one.

2           Q.     Do you recall, was that a newly created  
3     position for you and for Giant Eagle, or were you  
4     filling someone's shoes who had left?

5           A.     I was filling someone's shoes that had  
6     transferred to a different position internally.

7           Q.     Who was that person, if you recall?

8           A.     I believe it was Al Makita.

9           Q.     This position, one of the things that  
10    you describe as your responsibilities then was  
11    that you were accountable for the design,  
12    management and distribution of all pharmacy  
13    advanced analytics; correct?

14          A.     Yes.   That's what I wrote on here.

15          Q.     When you use design in that description,  
16    what do you mean by design?

17          A.     Work with the business lead to  
18    understand what information they needed, harvested  
19    that information from the database and provided it  
20    in a report.

21          Q.     Okay.   So...

22          A.     I guess to elaborate a little more, it  
23    wasn't my responsibility.   I was in support of the  
24    business leads.   So they technically maybe would  
25    have been the designers.   I was just supporting

1     their design.

2           Q.     And I'm trying to think of a way to  
3     describe it.

4           But you had some technical skills with  
5     respect to the analytical tools, the database  
6     tools. You had the ability to extract or find  
7     data and have it analyzed in certain ways.

8           And so if somebody asked you to try to come  
9     up with a way to analyze data, you could use the  
10    tool to try to figure out how to do that. That's  
11    a poor description, but is that somewhat accurate?

12          A.     Yes.

13                 MR. KOBRIN: Object to form.

14                 MR. BARTON: Yeah. I'd object to the  
15    form of that, too. That was bad.

16    BY MR. BARTON:

17          Q.     Let me try it a little better, just  
18    because I -- when we get into the areas of  
19    technical computer skill and that, those of us who  
20    don't have that lose some of the facility of the  
21    language.

22          So with your various software tools,  
23    including Microsoft Excel and others that were  
24    available to you for analytics, you had the  
25    ability and the knowledge to customize those and

1 use those tools to design or create the kind of  
2 reports that might be requested of you from the  
3 businesspeople for whatever objectives they had.

4 MR. KOBRIN: Object to form.

5 THE WITNESS: Yes.

6 BY MR. BARTON:

7 Q. And so that was your job -- part of your  
8 job from 2008 to October 2010, July 2008 to  
9 October 2010; correct?

10 A. Yes.

11 Q. And the next bullet point again says you  
12 created an automated Excel-based reporting system;  
13 right?

14 A. Yes.

15 Q. And that again -- you use lower case E,  
16 but you're, again, referring there to Microsoft  
17 Excel; correct?

18 A. Yes. Maybe I should capitalize those.

19 Q. No, I'm not being critical. You know,  
20 excel, lower case E, could mean something else,  
21 you know.

22 A. No. No.

23 Q. You could excel at something.

24 A. I appreciate the clarity and the  
25 feedback. I'll make sure I update that right

1 after this.

2 Q. Well, it's fine. It's kind of a  
3 millennial thing to use lower case.

4 A. I don't categorize the millennials.

5 Q. No, neither do I. That's why I don't  
6 know what I'm talking about.

7 So in the next bullet point you say,  
8 "Responsible for all technical Giant Eagle  
9 pharmacy strategic analysis."

10 That sounds like a lot. Can you kind of  
11 describe for me what you mean by that? What  
12 technical Giant Eagle pharmacy strategic analysis  
13 are you referring to in general there?

14 A. At the time I wrote this, I had added  
15 longitudinal patient analysis, MPR/PDC scoring,  
16 behavioral analysis, therapeutic analysis, in  
17 addition to prescription or companion prescription  
18 management, retention and nutrition models.

19 That's just a few of the things I would say.

20 Q. And I won't have you exhaustively  
21 describe all of those, but just so that we have a  
22 basic understanding of what some of those things  
23 mean or do, what does longitudinal patient  
24 analysis mean? What is that?

25 A. It's analytics revolving around looking

1 at a patient, not just at a single point in time,  
2 but over a course of therapy, this year versus  
3 next year versus the following year, as disease  
4 states progress or get better over time.

5 Q. Analyzing the data as it relates to a  
6 particular patient over time?

7 A. Yes.

8 Q. And what prescriptions they use and  
9 don't use and when and how much and those kinds of  
10 things; correct?

11 A. Yes.

12 Q. And then MPR/PDC scoring, what is that?

13 A. MPR is an acronym used in adherence  
14 scoring called medication possession ratio. And  
15 PDC scoring is another calculation method, which  
16 is proportion of days covered. It's, more or  
17 less, looking at a patient's life cycle from a  
18 prescription to identify if they have gaps in  
19 coverage.

20 We can look and see that you didn't take your  
21 meds for five days and as a clinician intervene or  
22 reach out to the customer to make sure they were  
23 compliant with the medication the doctor  
24 prescribed.

25 Q. I understand. So gaps in coverage.

1           When you say that, you're not referring to  
2   insurance coverage as we sometimes think of as  
3   coverage, but you're referring to the period of  
4   time that somebody had been prescribed to take  
5   medication.

6           And if the data that Giant Eagle has is that  
7   there was a greater period of time, for example,  
8   between the time they next filled that  
9   prescription, that might indicate a gap in their  
10   coverage?

11          A.    Yes.

12          Q.    So that's just yet another way that  
13   Giant Eagle is looking at individual patient data  
14   to analyze what is happening with patients to see  
15   if the patients need some additional help or  
16   counseling or services; correct?

17          A.    Yes. We would use them for chronic  
18   medications.

19          Q.    During this period of time, when you  
20   were a team of one and doing this kind of business  
21   analytics that you have described here -- and I  
22   know those are just two examples, I'm not trying  
23   to suggest that's exhaustive.

24          But during the time you were doing it, what  
25   tools other than Microsoft Excel did you use for

1 your data analytics at Giant Eagle?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: Microsoft Excel was  
4 primarily the delivery, the report delivery  
5 system. On the back end, behind Excel, a  
6 combination of Visual Basic programming and SQL,  
7 or SQL as we referred to it earlier.

8 SQL development applications would include  
9 Toad or SQL Developer, which Giant Eagle licensed  
10 during that time period.

11 BY MR. BARTON:

12 Q. So Toad and SQL Developer are kind of  
13 names of -- are those software programs that can  
14 be used to use SQL to kind of create relational  
15 databases?

16 A. Yes. Mainly we used them for harvesting  
17 or pulling the information out of the database.

18 But yes, you would develop your programming  
19 in that application, in either of those two.

20 Q. Maybe the best way to describe it might  
21 be that Giant Eagle through its 200-plus retail  
22 pharmacies acquires over time and accumulates a  
23 lot of data about patients, about volumes of drugs  
24 going from one place to another, and that all  
25 resides in sort of Giant Eagle databases



1       somewhere; correct?

2                   MR. KOBRIN:   Object to form.

3                   THE WITNESS:   Yes.   We store a sizable  
4       amount of data.

5       BY MR. BARTON:

6           Q.     And so what you've just described is you  
7       might use Toad or SQL Developer to create ways,  
8       formulas -- create ways to extract certain data  
9       that you want from that big database in just the  
10      way you want it; is that right?

11          A.     Yes.

12          Q.     And so that's what those tools do, is  
13      just help you kind of customize data extraction  
14      and analysis?

15          A.     It's one of the things it can be used  
16      for, yes.

17          Q.     The Visual Basic thing you mentioned,  
18      how does that differ?   What is Visual Basic?   Is  
19      it just another example of the same thing?

20          A.     Or what we used it for was Excel-based  
21      back-end programmings.   You could automate  
22      processes within Excel to extract data, organize  
23      the data, send out the information to respective  
24      business leaders, or save it and archive it as  
25      necessary.

1 Q. That Visual Basic is a programming  
2 language; right?

3 A. Yes.

4 Q. And so that is something that Excel can  
5 understand. You can put Visual Basic programming  
6 into Excel in certain ways to allow Excel to  
7 extract and present data.

8 A. Yes.

9 MR. KOBRIN: Object to form.

10 BY MR. BARTON:

11 Q. So the big database, I guess -- I don't  
12 know if it's one or more than one. The database  
13 of all this patient data, for example, that you  
14 have referenced, did that database have a name  
15 within Giant Eagle at the time?

16 A. I can't recall what the name was.

17 Q. Were there any other tools that you used  
18 for data analytics other than what we have already  
19 talked about, Excel, and then you using these  
20 back-end or programming additional tools, Visual  
21 Basic, Toad, SQL Developer?

22 MR. KOBRIN: Object to form.

23 THE WITNESS: Not that I can recall.

24 BY MR. BARTON:

25 Q. So during this time -- and then we'll

1     move on -- but during this time, from July 2008 to  
2     October 2010 that we're talking about, do you  
3     recall anyone at Giant Eagle asking you to design  
4     any system or analytics specifically to identify  
5     purchase orders of controlled substances by a  
6     Giant Eagle pharmacy that might deviate from some  
7     norm in a way that might raise potential suspicion  
8     about diversion or misuse of those controlled  
9     substances?

10                 MR. KOBRIN: I'm going to object to  
11     form.

12                 THE WITNESS: I can't recall any  
13     specifics.

14     BY MR. BARTON:

15                 Q. Can you recall anything general?

16                 A. At times we would -- loss prevention or  
17     someone would reach out asking for supplemental  
18     reports on research, and we would provide that.

19                 I can't recall the exact context of any one  
20     of those events.

21                 Q. Do you recall anything more? And  
22     specifically my question was really just: Did  
23     anyone ask you to sort of, that you recall, design  
24     a system to try to identify orders that might need  
25     some investigation as potentially suspicious?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: No. No one asked for a  
3 system.

4 BY MR. BARTON:

5 Q. If you had been asked -- knowing what  
6 you knew then about the data that Giant Eagle had  
7 and your tools that you had to analyze it, if  
8 somebody had asked you to do that between 2008 and  
9 2010, could you have done it?

10 MR. KOBRIN: Object to form.  
11 Speculative.

12 And make sure, you know, you have the  
13 information you need to understand what he's  
14 asking, what you would have had to have known then  
15 to build what he's asking you about now.

16 THE WITNESS: Could you repeat the  
17 question.

18 BY MR. BARTON:

19 Q. During that time, between July 2008 and  
20 2010, October 2010, if you had been asked to  
21 design or create or perform some analytics for  
22 that purpose, to try to identify orders from Giant  
23 Eagle pharmacies of controlled substances that  
24 might warrant further investigation as  
25 potential -- potentially suspicious, could you

1 have done it?

2 MR. KOBRIN: Object to form. It's  
3 speculative and vague as to what he would have had  
4 to build.

5 THE WITNESS: No.

6 BY MR. BARTON:

7 Q. You don't think you could have done it?

8 A. Under the guise that in 2008 I didn't  
9 have the skill set needed to do that.

10 Q. That's fair. What I'm interested in is  
11 whether, in your opinion -- because that's what  
12 you're doing right now, is you -- I'm asking you,  
13 do you think you could have done it. So I'm  
14 asking for your opinion.

15 You said you don't think you had the skill  
16 set. And that's fair. If you don't think you had  
17 it, you didn't have it.

18 But by that, do you mean you really didn't  
19 have the technical skill to do it, or did you not  
20 have the information you needed in order to try to  
21 do it?

22 MR. KOBRIN: Object to form.

23 THE WITNESS: Likely a combination of  
24 both.

25

1 BY MR. BARTON:

2 Q. But in either case, you weren't asked to  
3 do it during that period of time; correct?

4 A. No.

5 Q. The next job on your résumé is also with  
6 Giant Eagle, correct, the senior business analyst,  
7 strategic financial planning and analysis; right?

8 A. Yes.

9 Q. And that's from October 2010 to August  
10 of 2012, so almost a two-year period there;  
11 correct?

12 A. Yes.

13 Q. And that also appears to not be  
14 exclusive to the pharmacy side; true?

15 A. Yes. I would agree.

16 Q. So did you kind of move in the  
17 organizational chart out from under reporting  
18 to --

19 A. Sean Raynak.

20 Q. -- Sean Raynak -- sorry. That name is  
21 not sticking.

22 But did you move from reporting to him to  
23 reporting to somebody else during that period of  
24 time?

25 A. Yes.

1 Q. Who did you report to?

2 A. Valery Ciarimboli.

3 Q. And what was her position?

4 A. May not remember the exact title.

5 Manager of business planning and FP&A.

6 Q. That last thing you said, FP&A, what  
7 does that stand for?

8 A. Financial planning and analysis.

9 Q. Got it. What was the reason for your  
10 change of position then?

11 A. FP&A needed an SQL programmer and they  
12 sought me out.

13 Q. How did that work differ from what you  
14 had been doing before?

15 And I know it's obvious, if you were out of  
16 pharmacy and you're now in sort of the bigger  
17 Giant Eagle scope. But like how did it differ,  
18 the work you were doing?

19 A. Dramatically. I worked with other lines  
20 of businesses helping them build business plans.

21 Q. And in terms of helping the other lines  
22 of business build business plans, what was your  
23 role and contribution in helping them do that?

24 A. Many business leaders are not analytics  
25 or financial experts. So you would work with them

1 on their business plan to understand what their  
2 goals were and then construct either the budget or  
3 the analytics needed in order for them to achieve  
4 their goals.

5 Q. During that period of time, October 2010  
6 to August 2012, in this different role did you  
7 have different or additional analytical tools  
8 available to you for that?

9 A. Yes.

10 Q. What did you have available to you then  
11 that you hadn't had before?

12 A. Several series -- several applications  
13 built more around finance, Hyperion Strategic  
14 Planning, PACE. And there might have been another  
15 one. I think Hyperion Strategic Finance was the  
16 other one. It's been a while, so...

17 Q. That's fine. The last thing you said,  
18 it's a word that is eluding me. Hydroperion?

19 A. Hyperion.

20 Q. Oh, Hyperion. Okay.

21 A. Sorry.

22 Q. What is Hyperion?

23 A. I may have this wrong, but I believe it  
24 was an application company that was later acquired  
25 by Oracle. So it was just the name of their



1     analytical platform.

2           Q.     So, obviously, in this new role and in a  
3     different place in the company, there were  
4     obviously different business plans and objectives  
5     applicable to that side of the business.

6           And maybe for that reason, I think as you've  
7     indicated, there were some different tools that  
8     cater to what they're interested in, the planning  
9     and the PACE and whatever those things were;  
10    right?

11          A.     Yes.

12          Q.     Were those tools that you've just  
13    referenced using during that period of time, were  
14    those tools kind of in the company during the  
15    prior period, 2008 to 2010, but just simply not  
16    really relevant to the analyst job you were doing  
17    for pharmacy?

18          A.     I don't know.

19          Q.     That's fair. Well, I ask because we're  
20    talking about an area of, to some extent, software  
21    programming. And those things change over time as  
22    well; correct?

23          A.     Yes.

24          Q.     New software comes out, new tools become  
25    available just through advanced technology; right?

1 A. Yes.

2 Q. So that is part of what I was wondering,  
3 is whether these were new tools that you started  
4 using in that new position, whether it was your  
5 sense they were then available to you because they  
6 were just new programs or whether they just were  
7 simply more relevant to that business.

8 MR. KOBRIN: Object to form.

9 BY MR. BARTON:

10 Q. Do you recall one way or the other?

11 A. I don't know if they were new or just  
12 new to me.

13 Q. The tools that you had used prior, Excel  
14 and the back-end programming tools and languages  
15 that you used, the SQL programming tools, those  
16 were still available to you in your new position;  
17 correct?

18 A. Yes. We still used Excel.

19 Q. Then it appears in August 2012 you moved  
20 back to the pharmacy side of the business;  
21 correct?

22 A. Yes.

23 Q. And so from August 2012 to  
24 December 2014, you had the positions of manager  
25 and senior manager of financial planning for the

1 pharmacy side; right?

2 A. Yes.

3 Q. In that position, who did you report to  
4 then?

5 A. Under the manager title, directly to  
6 Greg Carlson. Under the senior manager title,  
7 directly to Brett Merrell.

8 Q. So that was in a different place  
9 organizationally in the company than you had been  
10 back when you were a business analyst in July 2008  
11 to October 2010; correct?

12 A. Yes.

13 Q. Some of the descriptions you provide of  
14 the work that you were doing seem like there's  
15 some overlap or they seem somewhat similar.

16 But why don't you tell me: How did this job  
17 from August 2012 to December 2014 differ from what  
18 you had been doing July 2008 to October 2010?

19 A. When I returned, I was in a more  
20 elevated role. I was replacing Sean Raynak who  
21 had left the organization, which is why you see a  
22 lot of the same business functions.

23 Q. In the first bullet point you are just  
24 describing analytics for the pharmacy department,  
25 in general, and describe some types that you were

1     doing.  You mention shrink.

2             What does shrink mean as you use it there?

3             A.   Shrink is lost, expired product that we  
4     have to return to the manufacturer for  
5     instruction, or could be valuation changes on a  
6     product.

7             Q.   So shrink then would represent any  
8     change in the value of the inventory of product on  
9     hand due to expiration, loss or reduction of  
10    value?

11            MR. KOBRIN:  Object to form.

12            THE WITNESS:  Yes.

13    BY MR. BARTON:

14            Q.   You reference the acquisition of the  
15    first closed-door specialty pharmacy in that third  
16    bullet point.

17            What was the specialty pharmacy that was  
18    acquired there?  What did it do?

19            A.   The specialty pharmacy was primarily  
20    focused on hepatitis C patient management.

21            Q.   Where was it located?

22            A.   Rocky River, Ohio.

23            Q.   As you recall, if you recall, was that  
24    created because there was a particular hepatitis C  
25    problem that that specialty pharmacy could serve

1 for that area?

2 A. I don't recall.

3 MR. KOBRIN: How are you doing  
4 time-wise? Do you want to take a break? Is this  
5 a good time for you to take a break?

6 MR. BARTON: That's fine.

7 THE WITNESS: Yeah. I wouldn't mind  
8 using the restroom and getting another coffee.

9 THE VIDEOGRAPHER: Going off the record.  
10 The time is 10:11 a.m.

11 (Recess from 10:11 a.m. to 10:33 a.m.)

12 THE VIDEOGRAPHER: Now going back on the  
13 record 10:33 a.m.

14 BY MR. BARTON:

15 Q. We're back on the record. And I've been  
16 asking you about your employment history at Giant  
17 Eagle and just some of the positions you've had,  
18 some of the responsibilities you've had, who you  
19 worked for, those types of things.

20 I have a few more down that, and so we'll  
21 stay with your LinkedIn profile here for a little  
22 bit. But I wanted to go back just to clarify  
23 something in my own mind that I don't think I  
24 asked or didn't understand.

25 I'm trying to understand the relationship

1 similarities/differences between the job that you  
2 had as the business analyst from July 2008 to  
3 October 2010 and then the job that you had two  
4 jobs later, from August 2012 to December 2014,  
5 both in the pharmacy department, both involving  
6 some data analytics components to it.

7 But as you have testified, you were really  
8 reporting to different people at the time, and so  
9 it wasn't the same job. It was a little bit of an  
10 elevated job for you, the second one; right?

11 A. Just to clarify, you're contrasting  
12 August 2012 to December 2014 with July 2008 to  
13 October 2010?

14 Q. Yes. That's what I'm trying to do. I'm  
15 trying to understand how those jobs were similar  
16 or different and who else kind of had those  
17 similar jobs. I'm just trying to figure out where  
18 you were in the company each time.

19 And so what I understand you to have told me  
20 is that when you were the business analyst from  
21 July 2008 to October 2010, that at that point in  
22 time, you were -- and now I can't even read my  
23 notes -- but you were reporting to Sean Raynak?

24 A. Correct.

25 Q. And Sean Raynak at that time you

1 understood to be reporting to whom?

2 A. I believe it was Randy Heiser.

3 Q. Randy Heiser. Right. Okay. That's  
4 what I thought. And so that's kind of what you  
5 recall having been the case from July 2008 to  
6 October 2010.

7 And then when you moved into the position of  
8 the manager, senior manager of financial planning  
9 in August 2012 -- so you had gone out of the  
10 pharmacy side and then came back to the pharmacy  
11 side -- at that time, what you've told me is you  
12 kind of replaced Sean Raynak, but you were  
13 reporting at that time initially, to Greg Carlson;  
14 correct?

15 A. Yes.

16 Q. And had Greg Carlson at that point --  
17 was Randy Heiser still with the company?

18 A. I can't recall.

19 Q. So at the time that you were reporting  
20 to Sean Raynak in the business analyst position,  
21 so back in 2008 to 2010 -- and I'm sorry I'm  
22 jumping back and forth. I'm trying to understand  
23 kind of just if there were changes  
24 organizationally in the company that I'm just  
25 trying to figure out. That's all.

1           At the time you reported to Sean Raynak, you  
2    had told me you were -- you were kind of a team of  
3    one in terms of this data analytics person with  
4    the SQL and Visual Basic skills under him;  
5    correct?

6           A.    Yes.  That's correct.

7           Q.    At that time, do you know, was there any  
8    data analytics person with programming skills  
9    reporting to Greg Carlson -- or it may not have  
10   been Greg Carlson, but reporting to that other  
11   line of business that you moved into in 2012?

12               MR. KOBRIN:  Object to form.

13               THE WITNESS:  Can you restate that.

14   BY MR. BARTON:

15           Q.    Yeah.  I'm trying to decide -- I'm just  
16   trying to understand -- I know we're talking about  
17   two different time periods, but I'm just trying to  
18   understand if you kind of -- let me ask it  
19   differently.

20           If you know, during the time of July 2008 to  
21   October 2010, during that time that you were in  
22   business analytics, team of one, reporting to Sean  
23   Raynak, do you know anyone else on the pharmacy  
24   side who also was in data analytics for purposes  
25   of the pharmacy, who had the SQL skills, those



1 types of things?

2 MR. KOBRIN: Did he know at that time --

3 MR. BARTON: Yes.

4 MR. KOBRIN: -- or does he know of now  
5 whether there was somebody at that time?

6 MR. BARTON: I'm asking him.

7 BY MR. BARTON:

8 Q. Do you know now whether there was  
9 somebody at that time?

10 A. There were IT people with varying skill  
11 sets, but I can't recall specifics.

12 Q. Do you recall working with anyone else  
13 during that period of time who also kind of had  
14 programming skills and used them for data  
15 analytics purposes for the pharmacy?

16 A. No.

17 Q. Did Sean Raynak have those kinds of  
18 programming or data analytics skills?

19 A. No.

20 Q. And did Greg Carlson?

21 A. No.

22 Q. Now moving forward to the August 2012 to  
23 December 2014 period again, so I'll leave 2008 to  
24 2010 alone now, in this time period of August 2012  
25 to December 2014, did you, by then, have people

1 under you who reported to you?

2 A. Between August 2012 and December 2014 in  
3 the manager and senior manager roles, I had  
4 several direct reports during that time.

5 Q. Who were they?

6 A. Kayla Voelker, Brad Devine, Sheila  
7 Yates, Jennifer Horin. I think that's it.

8 Q. Did they have similar job  
9 responsibilities or did they all differ, the four  
10 of them?

11 A. They all had different job  
12 responsibilities.

13 Q. Did any of them have programming skills  
14 or background?

15 MR. KOBRIN: Object to form.

16 THE WITNESS: Can you rephrase that or  
17 restate that.

18 BY MR. BARTON:

19 Q. Those four you just mentioned, did any  
20 of those four who were your direct reports, did  
21 any of them have skills in programming, either in  
22 Visual Basic or in SQL development skills?

23 A. Yes, but very light.

24 Q. Which of them had those skills? Did  
25 they all have those skills or did just some of

1     them?

2           A.     Kayla Voelker had skills.    The other  
3     three obtained skills during their tenure, but did  
4     not enter the organization with those skills.

5           Q.     And tell me a little more about Kayla  
6     Voelker.    Do you know when she entered the  
7     organization?

8           A.     I don't recall specifically.

9           Q.     Do you know if she was in the  
10    organization as far back as the 2008 to 2010 time  
11    period?

12          A.     She started with the organization after  
13    I started.

14          Q.     Which was July 2008.    But do you recall?  
15    Can you even ballpark it?   Do you know how long  
16    after you started that she did?

17                   MR. KOBRIN:   Object to form.

18                   THE WITNESS:   I can't -- I can't  
19    speculate.

20   BY MR. BARTON:

21          Q.     What's her background with programming  
22    or analytics as you would describe it?

23          A.     When she entered the organization, very  
24    light.   During her tenure with the organization,  
25    she obtained a bachelor's degree in a similar

1 skill area. I don't recall the specific degree.

2 Q. And as you sit here, do you know when  
3 she acquired that bachelor's degree?

4 A. I don't.

5 Q. You think it was in some kind of  
6 technical computer-related field of study?

7 A. I believe that to be true.

8 Q. And you characterize her skills at the  
9 time she entered the company as very light;  
10 correct?

11 A. Yes.

12 Q. That does distinguish her from the other  
13 three I think you listed who were also your direct  
14 reports during that 2012 to 2014 time.

15 Am I correct in understanding they -- as  
16 understand it, they may have entered the company  
17 with no such skills, but then whatever they  
18 learned, they learned on the job?

19 MR. RYAN: Object to form.

20 THE WITNESS: Can you restate which  
21 specific skills you're referring to?

22 BY MR. BARTON:

23 Q. Yeah. Good question. The skills I'm  
24 referring to right now are skills that involve  
25 using effectively the tools of data analytics,

1 including Excel and any of the other tools that  
2 we've talked about so far that you've used for  
3 data analytics.

4 A. So to retract my earlier comment, they  
5 all had some level of Excel skill prior to  
6 reporting directly to me.

7 Q. Okay.

8 A. Kayla had some programming language  
9 experience. The other three did not.

10 Q. Thank you for that clarification. And I  
11 think that's kind of what I understood from what  
12 you said before anyway, but I didn't probably  
13 phrase the -- I wanted to phrase the basic  
14 question broadly to see what the baseline was  
15 there.

16 In the last bullet point of your summary of  
17 your experience for the August 2012 to December  
18 2014 job -- so I'm looking at the top of page 3,  
19 Exhibit 1 -- that bullet point references the  
20 development of the pharmacy enterprise reporting  
21 system. Do you see that?

22 A. I do see that.

23 Q. What does that refer to? What was the  
24 pharmacy enterprise reporting system?

25 A. It's a further augmentation of the

1     Excel-based reporting system that was created in  
2     2008 and 2010.

3           Q.     And I believe you had mentioned that  
4     that one was capable of managing or creating over  
5     100 unique periodic reports, as you said it back  
6     then; correct?

7           A.     That's correct.

8           Q.     So this was a further development of  
9     that system then?

10          A.     That's correct.

11          Q.     What were the reports -- and I won't ask  
12     you to name all 100. But, I mean, in terms of the  
13     types of reports, the business purposes for which  
14     they were used, what types of reports are we  
15     talking about?

16                 MR. KOBRIN: Object to form.

17                 THE WITNESS: Namely, sales-based  
18     reporting by store, by pharmaceutical plan -- by  
19     that, I mean insurances -- looking at antibiotics  
20     performance, which was a promotion we had during  
21     that time, diabetes medication performance, just  
22     to name a few.

23     BY MR. BARTON:

24           Q.     So the pharmacy enterprise reporting  
25     system, as you've just described it there, you

1     used that to kind of refer to your system, in  
2     essence, that you had developed and created to  
3     give the businesspeople reports that they asked  
4     for.

5             Whatever it may focus on -- whatever the  
6     focus may have been, that's sort of a broad term  
7     to say that's the system I created to get them the  
8     data they asked for.

9             MR. KOBRIN:   Object to form.

10            THE WITNESS:   Yes.

11     BY MR. BARTON:

12            Q.     And primarily, as I understand it, at  
13     least from the reporting side, in terms of the  
14     reports you would actually give, Excel would be  
15     the tool that you used to kind of generate the  
16     reports; right?

17            MR. KOBRIN:   Object to form.

18            THE WITNESS:   Yes.   It was a Visual  
19     Basic language embedded into the back of Excel  
20     that executed a series of SQL statements, pulling  
21     the data into the Excel documents, then leveraging  
22     the SMTP server to email these reports out to the  
23     respective business users.

24     BY MR. BARTON:

25            Q.     And so a little bit in layperson

1 language, what you're talking about is not  
2 something that just comes already built into Excel  
3 when you buy it from Microsoft. It was using  
4 Excel, but you had to add programming to it to  
5 allow it to perform all these operations you're  
6 talking about?

7 MR. KOBRIN: Object to form.

8 THE WITNESS: Yes. Excel was the  
9 application. Language was added to it.

10 BY MR. BARTON:

11 Q. And the language that was added to it  
12 during 2008 to 2010, was there anyone other than  
13 you who added that language to it to help it  
14 perform the way it performed?

15 MR. KOBRIN: "It" being Excel --

16 MR. BARTON: Yes.

17 MR. KOBRIN: -- in this specific  
18 context?

19 MR. BARTON: Yes. And the system he's  
20 kind of described here.

21 THE WITNESS: Can you restate that one  
22 more time.

23 BY MR. BARTON:

24 Q. Yeah. Were there any other programmers  
25 or people with programming experience and skills



1     who -- in the 2008 to 2010 timeframe, that first  
2     time when you developed it, were there any other  
3     programmers who added programming to Excel to have  
4     it perform all those functions and generate those  
5     reports?

6             A.     No.

7             Q.     And then in 2012 to 2014, during that  
8     period of time when you've said that system got  
9     certain enhancements to it, were there other  
10    people, individuals, including anyone under you,  
11    who added programming to that system?

12            A.     Yes.   Technology enhanced dramatically  
13    in that window of time that allowed us better  
14    management of the reports that were being created  
15    and distributed.

16            That allowed me to train my direct reports --  
17    not all of them had the same level of training,  
18    but allowed me to train them to manage the  
19    application that had been previously created so  
20    they could manage it instead of me.

21            Q.     We'll see some documents here going  
22    forward, in which there came a period of time, and  
23    I believe it was in late 2003 -- 2013 when some  
24    programming was created or added to, I believe, an  
25    Excel application that Giant Eagle and HBC started

1 using to generate what we call daily threshold  
2 reports.

3 Do you recall that?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: I do.

6 BY MR. BARTON:

7 Q. And do you recall that happening in  
8 approximately that timeframe, late 2013?

9 A. I do.

10 Q. That programming that was added to the  
11 system to generate those reports, was that  
12 programming created by you?

13 A. Not me personally. Someone on my team.

14 Q. Was it created by Kayla?

15 A. Based on my best recollection, yes.

16 Q. And we have documents. We'll kind of go  
17 through them. So I know I'm just asking for your  
18 memory right now.

19 But that programming that Kayla added to the  
20 system was -- you're familiar with -- I mean, you  
21 know what we're talking about. You're familiar  
22 with what kind of programming that was that she  
23 did; right?

24 A. Generally speaking, yes.

25 Q. And, again, I struggle to use the right

1 kind of terminology. But she was using some SQL  
2 elements to generate these daily threshold  
3 reports; right?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: Yes. It used the  
6 combination of Visual Basic, the SQL executing  
7 against the database using the ODBC connection,  
8 and then leveraging the SMTP server to email out  
9 those reports to respective users.

10 BY MR. BARTON:

11 Q. And that programming that started  
12 generating those reports and to email them out to  
13 people, when do you recall Kayla creating that  
14 programming?

15 A. Can you restate that question so I make  
16 sure I'm answering in the right context.

17 Q. In your answer just a moment ago, I  
18 think you just kind of described the combination  
19 of programming that enabled the daily threshold  
20 reports to be generated and emailed out to their  
21 recipients; correct?

22 A. Yes.

23 Q. So that programming that enabled that  
24 process to occur, when do you recall that  
25 programming being created by Kayla?

1           A.     The programming to run the engine was  
2     originally created by me, that engine used to  
3     service up the report you're referring to, which  
4     I'd like you to clarify which report it is and  
5     then re-ask the question with the right time  
6     period so I make sure I'm answering...

7           Q.     No. I appreciate it. I want us to be  
8     accurate. I want us to know what we're talking  
9     about here.

10          A.     That's fine.

11          Q.     The program to run the engine, what you  
12     just used, are you referring in that statement to  
13     the programming necessary to take a report that is  
14     generated within Excel and email it out to the  
15     recipients?

16          A.     So the programming to make the report  
17     happen was originally written by me.

18          Q.     Let's be clear. Right now I'm asking  
19     about the daily threshold report.

20          A.     Okay.

21          Q.     And to be more specific, to make sure  
22     we're communicating, the daily threshold report  
23     that I'm referring to, as I understand it, was a  
24     report that would identify the sales quantities by  
25     individual pharmacies of Schedule II or III

1 controlled substances, that would identify sales  
2 quantities of controlled substances from those  
3 pharmacies in relation to a threshold that had  
4 been determined by some formula.

5 In other words, it would compare sales at a  
6 given time to a predetermined threshold. Are we  
7 talking about the daily threshold report?

8 MR. KOBRIN: Object to form. I don't  
9 think they were distributing any Schedule IIs at  
10 that time as well.

11 BY MR. BARTON:

12 Q. Yeah. I mean just controlled  
13 substances.

14 A. Without having a copy of the report  
15 right in front of me, I don't want to misstate, so  
16 I'm not sure.

17 Q. How would you describe the daily  
18 threshold report that you think we're talking  
19 about?

20 A. It was a daily run report that looked at  
21 volumes we were distributing and compared that to  
22 a threshold.

23 Q. And the volumes that were being  
24 distributed, for purposes of this daily run report  
25 that we're talking about, are we talking about

1 controlled substances only or any drugs?

2 A. Based on my recollection, it was  
3 isolated to controlled substances.

4 Q. So you created the programming to enable  
5 that daily run report to be generated?

6 A. Yes.

7 Q. When do you recall creating that  
8 programming?

9 A. I began development on it in likely  
10 2009. Just to be clear, we're talking about the  
11 engine to make reporting capable, not necessarily  
12 the unique report you're referring to in the daily  
13 threshold report.

14 Q. Okay.

15 A. That technology enhanced. We continued  
16 to build upon that to bring us to, I guess, 2013  
17 when that daily threshold report was created and  
18 placed in the engine, and "the engine" meaning the  
19 pharmacy enterprise reporting system as referred  
20 to in my LinkedIn profile.

21 Q. So the programming that generated or  
22 created the report, you said you started that  
23 program in 2009; right?

24 A. Can you restate that question.

25 Q. Yeah. I'm trying to follow from what

1     you said.

2             I think that you gave me the date of 2009 as  
3     the date when you said you started some  
4     programming that was used, ultimately, in the  
5     generation of the daily threshold report starting  
6     in 2013.

7             MR. KOBRIN:   Object to form.

8             THE WITNESS:   That's incorrect.

9     BY MR. BARTON:

10            Q.    How?   How is it incorrect?

11            A.    In 2009, we began developing an engine  
12     that would later become the enterprise reporting  
13     system.

14            Q.    And then is it true that the daily  
15     threshold report that started being generated in  
16     2013 was one eventual application, so to speak, of  
17     the enterprise reporting system?

18            MR. KOBRIN:   Object to form.

19            THE WITNESS:   It was one of the reports,  
20     one of -- that would be managed and distributed by  
21     the enterprise reporting system.

22     BY MR. BARTON:

23            Q.    And those reports did not begin to be  
24     generated -- no one began generating those reports  
25     until 2013; correct?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: No. That's incorrect.

3 BY MR. BARTON:

4 Q. When did they start getting generated?

5 A. I began writing reports in 2008 that  
6 later moved into a morphing system as technology  
7 enhanced through 2009, that eventually, in 2012,  
8 became that reporting system.

9 In early years technology wasn't there, and  
10 these reports were extremely manual.

11 Q. When you said you began writing reports  
12 in 2008, as you've said, as your résumé says, you  
13 were managing or generating over 100 unique  
14 periodic reports; correct?

15 A. That's correct.

16 Q. You were generating lots of reports in  
17 as early as the 2008 to 2010 timeframe; correct?

18 A. Yes.

19 Q. And is it your testimony that at that  
20 point in time, the technology did not exist for  
21 you to generate and distribute a daily threshold  
22 report like what started being distributed in  
23 2013?

24 A. I can't recall specifically if the  
25 technology or data would have been available.



1           Q.    When you said you started writing  
2   reports in 2008, did you start writing reports  
3   that compared quantity sold of controlled  
4   substances to some threshold in 2008?

5           A.    No.

6           Q.    When did you start writing or generating  
7   those reports?

8           MR. KOBRIN:   Object to form.

9           THE WITNESS:   I don't recall  
10  specifically.

11   BY MR. BARTON:

12          Q.    We know that it started in 2013 at  
13  least; correct?

14          MR. KOBRIN:   Object to form.

15          THE WITNESS:   I believe that it started  
16  in 2013 based on the reports that were generated.

17   BY MR. BARTON:

18          Q.    And as you sit here today, you can't  
19  testify as to that reporting of comparing sales of  
20  controlled substances at a pharmacy to some  
21  threshold; you can't recall or testify having  
22  started earlier than 2013; correct?

23          A.    No.

24          Q.    And "no" in answer to my question there  
25  means no, you can't -- I asked it in a double

1 negative, and I just want the record to be clear.

2 You do not have any recollection of it  
3 starting earlier than 2013; true?

4 A. I don't have recollection of the daily  
5 threshold reports starting any earlier than its --  
6 than 2013.

7 Q. And I appreciate that. And I just want  
8 to make sure I'm following, because we know the  
9 daily threshold reports, as named, started being  
10 distributed in 2013. Let me just make sure I  
11 follow you.

12 Do you have any ability to testify based on  
13 your recollection of reports that compared sales  
14 of controlled substances at an individual Giant  
15 Eagle pharmacy to some threshold by whatever name  
16 the report might be? Do you have the ability to  
17 testify that any reports of those kinds were  
18 generated by your system prior to 2013?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: Could you just reclarify  
21 the question and the time period so I answer  
22 accurately for you.

23 BY MR. BARTON:

24 Q. I'm sorry. So we've talked about the  
25 daily threshold report. And then I'm just making

1     sure that I'm not missing some report that may  
2     have been called something else --

3             A.     Okay.

4             Q.     -- but that also compared the sales of  
5     controlled substances at an individual pharmacy to  
6     a threshold.

7             So my question is:  Apart from the daily  
8     threshold report that started being distributed in  
9     2013, are you aware of any reports generated by  
10    your system that compared sales of any controlled  
11    substance at a Giant Eagle pharmacy to some  
12    threshold having been generated by your system  
13    prior to 2013?

14            MR. KOBRIN:  Object to form.

15            THE WITNESS:  Being that it's six years  
16    later, I can't recall if we did or did not.

17    BY MR. BARTON:

18            Q.     Fair enough.  But you cannot testify  
19    that you did.

20            A.     I also can't testify that we didn't.

21            Q.     So you have no recollection.

22            A.     That is correct.

23            Q.     Sorry.  That was a lot, but we'll move  
24    on.  I just want to be clear on that.

25            The next two jobs that are shown on your

1     LinkedIn profile in Exhibit 1 that we haven't  
2     talked about is a director of pharmacy business  
3     analytics, December 2014 to September 2015.

4             First, how was that a change from your  
5     previous position?

6             A.     Generally speaking, the position was the  
7     same. They promoted me again, but they flipped me  
8     over to report again to SFP&A rather than up  
9     through the pharmacy org chart.

10            Q.     So in terms of individuals, you started  
11     reporting at that point to whom?

12            A.     Jason Lapina.

13            Q.     And during that ten-month period, did  
14     you continue to have a team of individuals under  
15     you who were directly reporting to you?

16            A.     Yes.

17            Q.     So did the whole team move over, so to  
18     speak, in the org chart?

19            A.     I can't recall specifically. If I had  
20     to guess, I'd say yes.

21            Q.     And then the last job that is -- well,  
22     no. I guess there are two more.

23            Then we see director of pharmacy category  
24     management, August 2015 to January 2018, correct,  
25     on page 1.

1 A. That's correct.

2 Q. So then how was that a change from your  
3 preceding positions?

4 A. In August 2015, they took me out of  
5 pharmacy finance and analytics and made me  
6 responsible for brand and generic manufacturer  
7 relationships in procurement, and I relinquished  
8 all analytics and finance direct reports.

9 Q. What prompted that change for you?

10 A. The former senior category manager had  
11 left the organization, and they needed someone to  
12 fill the place.

13 Q. And who was the former senior category  
14 manager?

15 A. I should retract that. I'm not sure  
16 that was his exact title. It was Mike Bianco.

17 Q. In general terms, you replaced Mike  
18 Bianco when he left the organization?

19 A. Yes.

20 Q. And was that something you chose or just  
21 were directed to do?

22 A. They asked me if I was interested. Do  
23 you really have a choice?

24 Q. I don't know. It depends.

25 A. I accepted the position.

1 Q. In that position who were you reporting  
2 to?

3 A. I reported to Adam Zakin.

4 MR. BARTON: Let's go ahead and mark  
5 Exhibit 2.

6 (HBC-McClune Exhibit 2 was marked.)

7 THE WITNESS: I won't be able to find my  
8 name there.

9 MR. BARTON: I won't either.

10 BY MR. BARTON:

11 Q. I've handed you what we've marked as  
12 Exhibit 2. And it just appears to be a partial  
13 organizational chart for pharmacy administration  
14 as of August 2015. Is that true?

15 A. Based on my look at this right now, yes.

16 Q. And it appears to match up with what you  
17 were just testifying about, the change in your  
18 position as of August 2015, that you started  
19 reporting directly to Adam Zakin; correct?

20 A. Yes.

21 Q. And it would appear that at this point  
22 in time, at least from an organizational chart  
23 standpoint, there was a team of individuals under  
24 you reporting to you; correct?

25 A. That's correct.

1 Q. One of the members of that team is Kris  
2 Remas; correct?

3 A. Yes.

4 Q. Is that Kris male or female?

5 A. It's female.

6 Q. So by this point in time, given the  
7 change of role for you, were you kind of out of  
8 the analytics and data programming side of things  
9 by now?

10 A. Yes.

11 Q. And then it appears that in February of  
12 2018, you took on a new position again referred to  
13 as senior director of pharmacy procurement and  
14 business analytics.

15 Do you see that?

16 A. Yes.

17 Q. And that's your current position?

18 A. That is correct.

19 Q. Does that reflect kind of coming back  
20 into the analytics side of things?

21 A. It is me maintaining the procurement  
22 piece and then reassuming the analytics side.

23 Q. The job just keeps growing.

24 A. Yes.

25 Q. We might be done with Exhibits 1 and 2.

1           A.     I'll keep them handy in case you want to  
2 go back.

3           MR. BARNES: We should get through three  
4 or four exhibits today.

5           MR. BARTON: If we're lucky.

6           (HBC-McClune Exhibit 3 was marked.)

7 BY MR. BARTON:

8           Q.     I've handed you what I've marked as  
9 Deposition Exhibit 3. This is a multiple-page  
10 document. It has our reference number of  
11 P-HBC-1003 at the top and a Bates number at the  
12 bottom HBC\_MDL00034114.

13          Do you have that in front of you?

14          A.     Yeah. That's what it looks like.

15          Q.     And we won't spend a lot of time on  
16 this, but I have a couple of questions about it.

17          First, on the cover page there, it would  
18 appear to be a meeting appointment type of notice  
19 that was sent to you, among others; correct?

20          A.     Yes.

21          Q.     And so it would appear that it's kind of  
22 setting a meeting in the boardroom for Tuesday  
23 executive updates to all of the people who  
24 received that invitation; correct?

25          A.     Yes, based on my review here.



1           Q.    Were you someone who regularly attended  
2   a meeting like Tuesday executive updates?

3           A.    Not Tuesday executive updates.  In this  
4   particular -- I think they used that as a meeting  
5   organizer, not necessarily a person in the Outlook  
6   system.

7           Q.    Was this something that was just kind of  
8   distributed to you in the regular course of your  
9   job at Giant Eagle?

10          A.    This particular document, this would --  
11   it's for an annual operating plan, so it's once a  
12   year.

13          The Tuesday meetings happened every week.  So  
14   I didn't go every Tuesday, but I would go at least  
15   once a year, oftentimes more, but at least once.

16          Q.    And if something like an annual plan  
17   were to be on the agenda for a Tuesday meeting,  
18   that might make it more likely that you would have  
19   gone then?

20          A.    I would agree with you there.

21          Q.    So let's just talk about what this plan  
22   really was.

23          First, on the first page it refers to Fiscal  
24   Year 2015 AOP/Business Plan; correct?

25          A.    Yes.

1 Q. And this appears to just relate to the  
2 pharmacy division or part of Giant Eagle; correct?

3 A. Looking at the front page, yes.

4 Q. Right, based on the title.

5 And it has a date of June 24, 2014. And I  
6 believe that's when the meeting notice on the  
7 first page appears to have been set.

8 So, first, let me just ask: What was the  
9 fiscal year for Giant Eagle at that time? Did it  
10 run midyear to midyear or calendar year?

11 A. Since I've been at Giant Eagle, it runs  
12 July to June.

13 Q. July 1 to June 30?

14 A. Yeah. Date falls slightly off because  
15 of the leap years, et cetera.

16 Q. So was it usual and customary for Giant  
17 Eagle as it approached the end of a fiscal year  
18 to develop, circulate and talk about a plan for  
19 the coming fiscal year?

20 A. Yeah. We go through planning cycles.

21 Q. That's kind of a normal business thing  
22 to do; correct?

23 A. Based on my experience at Giant Eagle,  
24 yes.

25 Q. Yes. And fiscal year 2015 would refer

1 to the fiscal that began July 1, 2014 and ended  
2 June 30, 2015; is that right?

3 A. Roughly. Again, not sure if it started  
4 on the 1st, but...

5 Q. So if you'll turn with me to what is the  
6 fifth page of this -- actually, let's do the  
7 fourth page, the one up at the top that's 001.4.  
8 I guess there's another page 4 on the bottom;  
9 right?

10 There's a box there called Key Initiatives,  
11 and it just identifies certain issues. The first  
12 issue that is listed there is an issue called  
13 Noncompliance. Do you see that?

14 A. Yes. I see it.

15 Q. And there's not a lot of detail here and  
16 so I don't know whether you can put that in any  
17 context for me or not.

18 But do you know in that context what was  
19 being conveyed or meant by noncompliance?

20 A. I do not.

21 Q. That's fine. If you turn the page, page  
22 5, there's a box listing a series of initiatives;  
23 correct?

24 A. Yes.

25 Q. And then there are also columns for

1     what's said is "Owner." But I presume that's  
2     assigning that initiative to a person who is  
3     primarily responsible for it; correct?

4             A.     Yes. That would be my assumption.

5             Q.     And then a target date for some of them;  
6     right?

7             A.     Yes.

8             Q.     So the first initiative shown there  
9     says, "Obtain vendor accredited wholesale  
10    certification at HBC"; right?

11            A.     Yes. That's how it reads.

12            Q.     Are you familiar with that effort, in  
13    general, that Giant Eagle and HBC set out to  
14    obtain VAWD, the Vendor Accredited Wholesale  
15    Distributors, certification for the HBC facility,  
16    and this describes that initiative?

17                   MR. KOBRIN: Object to form.

18                   THE WITNESS: Yes. I am familiar.

19    BY MR. BARTON:

20            Q.     So as of June 24, 2014, when this was  
21    prepared, is it true that VAWD certification for  
22    the HBC facility had not yet been obtained?

23            A.     To my best recollection, yes. It has  
24    not been obtained.

25            Q.     And the target date as set here in this

1 business plan was for that to happen in -- would  
2 you interpret that as the third quarter, Q3, of  
3 fiscal year 2015?

4 A. Yes.

5 Q. So at the time in June of 2014, the goal  
6 of the company as it related to VAWD certification  
7 for HBC was to accomplish that by the third  
8 quarter of fiscal year 2015, which would have  
9 been, I assume, kind of January to March of 2015.

10 A. Yes.

11 Q. And it has a bullet point under it. It  
12 says, "Qualifies HBC to distribute to Maryland and  
13 Indiana."

14 Did you understand that to be the primary  
15 business benefit to HBC in obtaining VAWD  
16 certification for the HBC warehouse?

17 A. Yes.

18 Q. That was kind of the motivating reason  
19 that it was an initiative as of then?

20 A. Yes.

21 Q. And then if you go down further, there's  
22 an initiative that says, reads, "Enhance  
23 suspicious order monitoring system (SOMS) at HBC."

24 Do you see that?

25 A. Yes. I see that.

1 Q. And then it cites a federal requirement  
2 underneath it, 21 CFR 1301.74(b); correct?

3 A. Yes, it does.

4 Q. Do you recall being a part of any  
5 discussions at this time or in this meeting about  
6 what was needed to enhance the suspicious order  
7 monitoring system at that time?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I don't recall specifics.

10 BY MR. BARTON:

11 Q. But you would agree from this document  
12 and that being listed as an initiative like the  
13 other initiatives you see there, that as of  
14 June 24, 2014, it was an initiative or goal of  
15 Giant Eagle to enhance its suspicious order  
16 monitoring system at HBC for the coming fiscal  
17 year?

18 A. Based on how this reads, yes, we were  
19 looking to continually improve.

20 Q. But as you sit here today, you don't  
21 recall specific discussions about exactly what  
22 enhancements were being talked about in this  
23 meeting at that time?

24 A. I don't recall specifics, no.

25 Q. It would appear that Joe/HBC is

1 assigned, if you will, as owner of that  
2 initiative; true?

3 A. Yes.

4 Q. Does that refer to Joe Millward?

5 A. I'm not sure.

6 Q. And you would agree that there was not a  
7 target date specifically established, at least in  
8 this plan, as of that time; correct?

9 A. According to the document, the date was  
10 TBD.

11 Q. To be determined; correct?

12 A. If that's your interpretation of it,  
13 yes. Yes.

14 Q. Is that your interpretation?

15 A. That would be my interpretation of it.

16 Q. Are you aware of any specific target  
17 date outside of this document that was established  
18 then or shortly thereafter for that initiative?

19 A. I don't recall specifically.

20 Q. The next one right below it is,  
21 "Implement controlled substances ordering system,"  
22 and then in paren what we sometimes say as "CSOS,"  
23 that's C-S-O-S; correct?

24 A. Yes. I see that.

25 Q. And there's an owner or person assigned

1 to that that is Greg. And do you interpret that  
2 to mean Greg Carlson?

3 A. I would agree with that interpretation.

4 Q. And with a target date of that  
5 implementation of second quarter of fiscal year  
6 2015; correct?

7 A. That's correct.

8 Q. Which, based on the fiscal year and when  
9 it falls, second quarter of fiscal year 2015 would  
10 have been October, November, December of calendar  
11 year 2014; correct?

12 A. Correct.

13 Q. Can you just describe generally what the  
14 CSOS or controlled substances ordering system was  
15 for Giant Eagle?

16 MR. KOBRIN: Object to form. No  
17 foundation.

18 BY MR. BARTON:

19 Q. Or HBC.

20 MR. KOBRIN: Same objection.

21 THE WITNESS: It's a system that  
22 electronically would maintain DEA certificates so  
23 we would not have to use paper 222s to order  
24 controlled substances, Schedule IIs, from any  
25 wholesale distributor.



1 BY MR. BARTON:

2 Q. So up until the implementation of this  
3 controlled substances ordering system, was Giant  
4 Eagle using paper forms to order controlled  
5 substances from distributors like McKesson?

6 A. To the best of my knowledge, yes.

7 Q. Was there any other functionality  
8 intended to be used from this controlled  
9 substances ordering system?

10 MR. KOBRIN: Object to form.

11 THE WITNESS: I can't recall  
12 specifically.

13 BY MR. BARTON:

14 Q. If we flip forward a couple of pages to  
15 page 7, there's some sales and costs and margin  
16 numbers on there. We're not going to go through  
17 all of them, but I wanted to ask you about one.

18 There's a line down toward the bottom of this  
19 chart that identifies Sourcing Savings. Do you  
20 see that?

21 A. I do.

22 Q. There's a number there in the Cost  
23 column which would appear to represent a negative  
24 18,419,331. And then that number also shows up  
25 correspondingly as a positive in the Margin

1 column; correct?

2 A. I see that.

3 Q. So would it be correct to interpret that  
4 line item as indicating that Giant Eagle for --  
5 well, first of all, let's just make sure we are  
6 clear on what part of the chart we're in.

7 This appears in a part of the chart, as I see  
8 it, that is for fiscal year 2015 base; correct?

9 A. I want to track with you the right way.

10 Q. Yeah. No problem.

11 A. Can you say it one more time.

12 Q. Yeah. There appear to be two parts of  
13 this chart, and the the top part starts -- the  
14 first line is Fiscal Year 2014 Forecast; right?

15 A. Okay.

16 Q. And I'm assuming what that means is  
17 Giant Eagle is just coming up to the end of its  
18 fiscal year. It's maybe within days of the end of  
19 its fiscal year, right, at this time, June 2014;  
20 correct?

21 A. Yeah. I would agree.

22 Q. And so when it says Fiscal Year 2014  
23 Forecast and it has some numbers there, I'm  
24 assuming the top part of that chart is saying,  
25 we're about to the end of our fiscal year and

1 here's what we think the numbers look like in  
2 those categories for the pharmacy part of the  
3 business; right?

4 A. I would agree.

5 Q. Then there's a darker line and then the  
6 Fiscal Year 2015 Base part of the chart goes down  
7 from there; right?

8 A. Yeah. I can see that.

9 Q. And it appears from the top bullet point  
10 that fiscal year 2015 base probably is shorthand  
11 for the fiscal year 2015 baseline forecast; is  
12 that right?

13 MR. KOBRIN: Object to form.

14 THE WITNESS: I would agree with your  
15 assessment based on what I'm looking at in the  
16 chart.

17 BY MR. BARTON:

18 Q. Right. So the bottom part of the chart  
19 is a forecast, in these areas, a forecast by the  
20 company for the coming fiscal year.

21 A. Which line are you referring to?

22 Q. Right now the Fiscal Year 2015 Base,  
23 just the total line. This whole part of that  
24 chart is what --

25 A. So yes.

1 Q. Those are kind of projections for the  
2 fiscal year that's about to start?

3 A. Correct.

4 Q. And so the sourcing savings, whatever  
5 that means -- do you know what sourcing savings  
6 refers to?

7 A. Yes.

8 Q. What does it refer to?

9 A. Attempting to gain better cost of goods  
10 to combat inflation and lower reimbursement rates  
11 from insurance companies.

12 Q. So attempting to obtain better cost of  
13 goods. The rest of what you said are the reasons  
14 for doing that; right?

15 A. Correct.

16 Q. But the sourcing savings, as you  
17 understand it, refers to trying to lower the cost  
18 of the goods that Giant Eagle pharmacies are  
19 selling; right?

20 A. Yes.

21 Q. Was the HBC warehouse one of the ways,  
22 one of the mechanisms or strategies that Giant  
23 Eagle used to lower its cost of goods sold?

24 A. Yes. We would use all sourcing vehicles  
25 in order to improve our cost of goods.

1 Q. And there are some other sourcing lines  
2 in this breakdown.

3 But as you just would interpret sourcing  
4 savings, that would be any way in which Giant  
5 Eagle was attempting to lower its cost of goods  
6 sold; right?

7 A. Yes.

8 Q. And so the forecast for fiscal year of  
9 2015 was -- Giant Eagle was forecasting that it  
10 believed it could save 18,419,000 in sourcing  
11 savings and thereby add that amount to its margin,  
12 its profit margin; correct?

13 A. Based on this chart, that is an ask from  
14 the board for our budget. I don't know if that's  
15 an achievable number, but...

16 Q. Right. For purposes of that number,  
17 that was what was in this business plan at least  
18 as of June 24; correct?

19 A. I would agree, yes.

20 Q. We don't have any more detail in terms  
21 of what was behind that number, but that's just  
22 sort of a big number on that point; right?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: I see the number of 18,4  
25 as you described.

1 BY MR. BARTON:

2 Q. So would you turn with me to page --

3 MR. KOBRIN: Do you have a lot more on  
4 this exhibit? Do you want to take a break or do  
5 you want to finish this exhibit?

6 MR. BARTON: If you don't mind, we'll  
7 finish. I don't have that much more. I have a  
8 little bit more.

9 MR. KOBRIN: Finish off the exhibit.

10 THE WITNESS: We can finish the exhibit,  
11 and then, I guess, take a break.

12 MR. BARTON: That's fine. Okay.

13 BY MR. BARTON:

14 Q. If you'll turn with me to page 10. Page  
15 10 is another slide, I guess.

16 Does this look like kind of a PowerPoint  
17 presentation to you, by the way, this whole  
18 exhibit?

19 A. Yeah. The whole exhibit does look like  
20 a PowerPoint presentation.

21 Q. So page 10 is another slide with the  
22 title Role of Pharmacy Within Giant Eagle. Do you  
23 see that?

24 A. Yeah. I see it.

25 Q. And it starts with the statement,

1 "Within Giant Eagle, pharmacy is critical to our  
2 success."

3 Do you agree that Giant Eagle considered  
4 pharmacy as critical to the success of Giant  
5 Eagle?

6 A. I think all departments within Giant  
7 Eagle are critical to its success. So, yes, I  
8 would agree that pharmacy is one of those  
9 departments.

10 Q. And the chart there in the middle of the  
11 page appears to just provide some numbers or  
12 context on that.

13 And it would appear, just so that I'm  
14 interpreting it correctly, that the YTD P11 FY14  
15 would suggest that these are fiscal year '14  
16 numbers; correct?

17 A. Make sure -- I lost where you're YTD is.

18 Q. I'm sorry. I'm looking at the little  
19 fine print under the box just to see what these  
20 numbers represent.

21 A. Yes. And I would agree. It's year to  
22 date, period 11.

23 Q. So the Sales row refers to, I assume,  
24 total sales in those categories. And the Margin  
25 refers to kind of the profit margin or the amount

1 of profit realized from those sales.

2 Is that how we interpret that?

3 A. Technically, as it's posted here, it  
4 would be the gross profit before expenses.

5 Q. That's what Margin represents?

6 A. That's what Margin represents.

7 Q. So in fiscal year '14, would you read  
8 and interpret this as suggesting that the sales  
9 from the pharmacy side of Giant Eagle, the sales  
10 from the pharmacy represented [REDACTED] percent of all  
11 of Giant Eagle's sales?

12 A. It's all of [REDACTED] of supermarket  
13 and Market Districts, [REDACTED] in total  
14 sales.

15 Q. And so that's -- you've just defined  
16 what SM plus MD means. That's supermarket plus  
17 Market District?

18 A. That's correct.

19 Q. So Giant Eagle may have some sales that  
20 aren't supermarket and Market District, is that  
21 what you're suggesting?

22 A. That's correct.

23 Q. So pharmacy represents [REDACTED] percent of  
24 the supermarket and Market District sales; right?

25 A. Yes.



1 Q. If we turn to page 28 of this exhibit,  
2 the title of this is Sourcing Efficiency.

3 Do you see that?

4 A. Yeah. I do see that.

5 Q. And just for context -- I should have  
6 told you to keep a thumb on page 7, but just to  
7 match up the numbers.

8 Back on that chart that we were looking at,  
9 there was a line item for sourcing efficiency with  
10 a total of 1.585 million projected cost savings  
11 there.

12 Do you see that?

13 A. Yeah. I do see that.

14 Q. So then back to 28. This slide appears  
15 to provide some further detail on where that 1.585  
16 sourcing efficiency cost savings is projected to  
17 come from; correct?

18 A. According this document, yes.

19 Q. And so according to this document, the  
20 VAWD certification piece of that initiative that  
21 we looked at was projected, as of this document,  
22 projected to contribute \$335,000 in cost savings  
23 to the company in fiscal year 2015; correct?

24 A. Yes.

25 Q. And CSOS implementation was projected to

1     save or provide a cost savings of \$1 million to  
2     the company in fiscal year 2015; correct?

3           A.     Yes. To clarify, cost savings is more  
4     overhead cost in this context.

5           Q.     I appreciate the clarification.

6           Do you know if VAWD certification for the HBC  
7     warehouse to enable it to ship to Maryland and  
8     Indiana, do you know if that VAWD certification  
9     was obtained?

10          A.     I know that it was not.

11          Q.     Do you know why it was not?

12          A.     Because we closed the pharmacy portion  
13     of that warehouse.

14          Q.     Did that happen in fiscal year 2015?

15          A.     No.

16          Q.     When did that happen?

17          A.     In fiscal year 2016.

18          Q.     I think what you testified is you didn't  
19     get the VAWD certification because you closed the  
20     warehouse, or the plan became to close the  
21     warehouse, I suppose.

22          A.     I'll clarify saying the plan was to  
23     close the warehouse.

24          Q.     You didn't close the warehouse because  
25     you didn't get VAWD certification for Indiana and

1 Maryland; correct?

2 A. That's correct. We did not close it for  
3 that reason.

4 Q. But was the effort to obtain VAWD  
5 certification abandoned at some point because the  
6 plan became to close the warehouse for pharmacy?

7 A. That's why we did not get the location  
8 certified, because we did intend to close the  
9 warehouse.

10 MR. BARTON: Okay. Very good. We can  
11 take a break now.

12 THE VIDEOGRAPHER: We're going off the  
13 record. The time now is 11:46 a.m.

14 (Recess from 11:46 a.m. to 12:07 p.m.)

15 THE VIDEOGRAPHER: We're now going back  
16 on the record. The time is 12:07 p.m.

17 (HBC-McClune Exhibit 4 was marked.)

18 BY MR. BARTON:

19 Q. Mr. McClune, I'm going to move on to a  
20 new exhibit, you'll be happy to know. I'm handing  
21 you what we've marked as Exhibit 4.

22 MR. KOBRIN: Is Mr. McClune on this  
23 exhibit?

24 MR. BARTON: He is not.

25

1 BY MR. BARTON:

2 Q. I will represent to you, Mr. McClune,  
3 and your counsel, that this document that has a  
4 Bates number HBC\_MDL00128238 and our reference  
5 number of 05039. It's a multiple-page document.  
6 It goes through MDL00128260.

7 This document doesn't -- you are not on any  
8 of the emails that I see here, but I'll represent  
9 to you that this was produced to us as part of  
10 what is described as your custodian file, meaning  
11 whatever that means.

12 It means that it was produced to us by Giant  
13 Eagle as a document that you were at least deemed  
14 to have custody of as part of your set of  
15 electronic documents or whatever. I won't say  
16 anything more about it because I don't know what  
17 that means.

18 I don't know if you've ever seen it before,  
19 but I just wanted to ask you if this looks  
20 familiar, if you've ever seen this document  
21 before, which is an email chain with some  
22 attachments.

23 A. Give me one minute and make sure I  
24 review this.

25 Q. Yeah. And I don't have many questions

1 about it, but I did just want to see if this was  
2 familiar to you.

3 A. Yeah. I mean, there's only a couple of  
4 pages here, so...

5 I am not familiar with this document in  
6 particular. I am familiar with this type of  
7 document, though.

8 Q. And that was really going to be what I  
9 asked. What I wanted to ask you is: This  
10 particular document I don't think has any unique  
11 significance, to me certainly, but would this  
12 document be an example of a document, a set of  
13 communications that was occurring in August of  
14 2014 around the effort to try to attempt to obtain  
15 VAWD certification for the HBC warehouse?

16 MR. KOBRIN: Object to form.

17 THE WITNESS: Yes. When we began  
18 organizing our efforts for VAWD, we -- there are  
19 certain requirements. We built those requirements  
20 and started working with our manufacturer partners  
21 to make sure that paperwork was on file in our  
22 system.

23 BY MR. BARTON:

24 Q. This email exchange involves a woman I  
25 asked you about earlier, Kris Remas; right?

1 A. Yes.

2 Q. And she was part of your team; is that  
3 right?

4 A. Not on August 28, 2014, but at a later  
5 date and time.

6 Q. That's right. That's right. That org  
7 chart was as of August '15, and that was  
8 representing a change for you; correct?

9 A. Yes. That change occurred in August of  
10 2015.

11 Q. Got you. Okay. So this is August of  
12 2014. She wasn't yet a part of your team, but you  
13 know who she is.

14 A. Yes, I do.

15 Q. And she, at least, was a part of this  
16 effort to do -- as you described, to go get  
17 certain documentation from manufacturers or  
18 suppliers as part of the effort to obtain -- try  
19 to obtain VAWD accreditation.

20 A. Yes.

21 Q. And is it true that as of August of  
22 2014, at the time that this effort, like this  
23 document and maybe others like it, were occurring,  
24 that at that point in time Giant Eagle, among  
25 other things, was trying to begin to document the

1 policies and procedures that it used with respect  
2 to its business practices in a greater way than it  
3 had before for purposes of VAWD certification?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: VAWD requires an  
6 incredible amount of effort in organizing existing  
7 paperwork.

8 I recall many of these, and a lot of them  
9 were already on file. This is just one event  
10 where we needed either a new form filled out or  
11 updated paperwork from the manufacturer.

12 And I'm not sure if I answered your question  
13 but...

14 Q. Yeah. I didn't ask a very good one.  
15 But I think you did.

16 The process that Giant Eagle was going  
17 through in seeking VAWD certification for the HBC  
18 warehouse, that process itself, did it cause Giant  
19 Eagle to organize and, in some instances,  
20 generate, create some documentation that it didn't  
21 used to have so that it could satisfy VAWD's  
22 expectations?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: Mostly just organizing  
25 existing paperwork.

1 BY MR. BARTON:

2 Q. So in context here, this is happening  
3 in -- I don't know. August 28, would that be the  
4 end of the first quarter of fiscal year 2015?

5 A. End of period 2, yes.

6 Q. Okay.

7 A. Is that right? August -- end of  
8 period 1.

9 Q. Period 1. Right.

10 A. No. Period 2. July, then August, so  
11 yeah.

12 Q. Yeah. I don't know how you count the  
13 periods.

14 A. Neither do I.

15 Q. Well, it's the end of the second month  
16 of fiscal year 2015.

17 A. That's correct.

18 Q. And based on this, that appears to fit  
19 the timeframe that we looked at from the business  
20 plan, which was -- the initiative, as of this  
21 point in time, was still to try to obtain VAWD  
22 certification by quarter 3 of fiscal year 2015,  
23 which would have been the first part of 2015;  
24 right?

25 A. I apologize. I'm flipping back.



1 Q. That's fine.

2 A. Yes, so by the end of quarter 3. We're  
3 in quarter 1. So, yeah, we are working on our  
4 efforts to gain that accreditation.

5 Q. And you would interpret just that set of  
6 documents that's Exhibit 4 as just one piece --  
7 there were probably lots of other pieces like  
8 it -- one piece of the effort to try to get that  
9 VAWD certification?

10 A. Correct. Every manufacturer required  
11 this set of documents or documents that were very  
12 similar to this to be on file.

13 (HBC-McClune Exhibit 5 was marked.)

14 BY MR. BARTON:

15 Q. I hand you Exhibit 5. Exhibit 5 is a  
16 one-page document, the Bates number  
17 HBC\_MDL00132616 and our number HBC-1126.

18 Have you seen this document before?

19 A. Do we know -- do you know when this  
20 document was created? I don't have a date on it.

21 Q. Yeah. You're right. It doesn't have a  
22 date on it. What I would represent to you is that  
23 we did receive as part of the production of  
24 documents what we call metadata for documents.

25 And I will represent to you that our review

1 of the metadata that was produced with this  
2 document has a date of 11/16/2014, so November 16,  
3 2014. I won't represent anything more about the  
4 metadata as far as whether that's date created or  
5 date last revised or whatever.

6 I only can say there is a date that is  
7 associated with this of November 16, 2014. So  
8 that's the best I can do.

9 A. I'm not a hundred percent sure I've seen  
10 this document in this state, in this form.

11 Q. And it's not a document, for example,  
12 that you reviewed in preparation for your  
13 deposition? You haven't seen it recently;  
14 correct?

15 MR. KOBRIN: Object to form. I don't  
16 want him answering whether he's seen this or any  
17 other document in preparation for his deposition.

18 MR. BARTON: Well, I think he's answered  
19 it anyway.

20 BY MR. BARTON:

21 Q. Because this is not familiar to you; is  
22 that fair?

23 MR. KOBRIN: As a general matter, is it  
24 familiar to you or not in your general work at  
25 Giant Eagle?

1 THE WITNESS: The document or the  
2 context?

3 BY MR. BARTON:

4 Q. I just want to separate them, yeah.  
5 Because right now I'm just asking you about the  
6 document, and then I will ask about the context  
7 and the content.

8 But the document itself, is it something that  
9 rings a bell, you think you've seen before in that  
10 form?

11 A. I can't say for certain.

12 Q. The content, let's talk about the  
13 content of the document.

14 Does the content describe a subject matter  
15 that is familiar to you and that you have had some  
16 exposure to with Giant Eagle?

17 A. Yes.

18 Q. And what was your experience with the  
19 suspicious order monitoring program for Giant  
20 Eagle?

21 MR. KOBRIN: Object to form.

22 THE WITNESS: In what context?

23 BY MR. BARTON:

24 Q. Let me use a different word. Experience  
25 is broad enough that that's a problem, I think.

1           Did you have any role or responsibility in  
2   the creation of Giant Eagle's suspicious order  
3   monitoring program to comply with  
4   21 CFR 1301.74(b)?

5           MR. KOBRIN:   Object to form.

6           THE WITNESS:   At what date and time?

7   BY MR. BARTON:

8           Q.   At any date and time.

9           A.   I think the answer is yes.

10          Q.   So at what date and time did you have a  
11   role in that creation or development of that  
12   program?

13          A.   This particular segment of the  
14   regulation is part of a much larger issued  
15   regulation by the DEA.

16          Just about every aspect of the business works  
17   on constant improvement of maintaining and  
18   upholding the law, the regulation.   This  
19   particular segment, I don't know it offhand  
20   verbatim, but I've seen it before.

21          So in many aspects through the years, either  
22   in support of or continuing to enhance our  
23   existing processing system.

24          Q.   Well, okay.   Let me just break that down  
25   a little bit.

1 Giant Eagle, as an owner and operator of  
2 pharmacies, and HBC, as a distributor wholesaler  
3 of pharmaceutical drugs, including controlled  
4 substances, both had obligations under the  
5 Controlled Substances Act as a whole to comply  
6 with various federal laws and regulations as it  
7 relates to controlled substances; correct?

8 MR. KOBRIN: Object to form.

9 There's a lot of statements and assumptions  
10 built in there about the relationship between HBC  
11 and Giant Eagle which I don't think are in the  
12 record or supported by the testimony.

13 THE WITNESS: Can you clarify it.

14 BY MR. BARTON:

15 Q. Well, okay. Let's just talk about HBC  
16 for now. Was HBC a distributor of prescription  
17 drugs?

18 A. Yes. HBC is registered as a -- with the  
19 DEA as a distributor of prescription drugs.

20 Q. And during the time, during the entire  
21 time that you've worked for HBC starting in 2008,  
22 did HBC distribute prescription medication?

23 MR. KOBRIN: Object to form.

24 Is he drawing a legal conclusion on these  
25 issues or is he just stating what he knows to be

1 factual regarding the content of HBC's warehouse?

2 MR. BARTON: I'm just asking him. I'm  
3 not trying to use distributor in any legal sense  
4 other than just how it's used in his  
5 understanding.

6 THE WITNESS: Can you restate it, and  
7 then I'll make sure I answer correctly.

8 BY MR. BARTON:

9 Q. What did HBC do?

10 A. HBC purchased, warehoused and  
11 distributed to Giant Eagle locations prescription  
12 drugs.

13 Q. And for a period of time, it also  
14 included within that distributed some controlled  
15 substances, some scheduled controlled substances;  
16 correct?

17 A. Yes.

18 Q. And for purposes of the controlled  
19 substances part of its distribution, that was from  
20 2009 to 2014; is that correct?

21 A. Yes. I believe that to be correct.

22 Q. And you worked for Giant Eagle during  
23 that entire time; correct?

24 A. Yes, I did.

25 Q. As a distributor of controlled

1 substances, did you understand that HBC had  
2 obligations under the Controlled Substances Act to  
3 comply with certain federal laws and regulations  
4 relating to the distribution of controlled  
5 substances?

6 MR. KOBRIN: Object to form. Again, it  
7 assumes a legal conclusion.

8 THE WITNESS: Yeah. I preface my  
9 response by saying I am not a lawyer, so I can't  
10 fully interpret what the legal obligation is  
11 there.

12 So I don't think I'm in a position to answer  
13 unless you have another way to re-form the  
14 question.

15 BY MR. BARTON:

16 Q. All right. That's fine.

17 You don't want to be one to say whether HBC  
18 had any legal obligations under the Controlled  
19 Substances Act or not; correct?

20 A. Again, my nonlegal interpretation is  
21 Giant Eagle had an obligation to the DEA due to  
22 our registered licenses with the DEA.

23 The regulation is contextual. So because we  
24 are a captive self-distributor, the interpretation  
25 of the vague regulations is better subject to

1 legal opinion and not mine.

2 Q. But are you comfortable though giving us  
3 your opinion that Giant Eagle at all times was in  
4 compliance with whatever regulations they were  
5 subject to?

6 A. Yes. Giant Eagle was definitely in  
7 compliance.

8 Q. And that's based on -- I mean, what do  
9 you base that opinion on? Is that just sort of a  
10 hopeful aspiration?

11 MR. KOBRIN: Object to form.

12 THE WITNESS: Can you restate that?

13 BY MR. BARTON:

14 Q. If you aren't comfortable kind of  
15 expressing your understanding of what regulations  
16 Giant Eagle was subject to or not subject to, how  
17 can you be comfortable expressing the opinion that  
18 Giant Eagle was always in compliance with the  
19 regulations?

20 MR. KOBRIN: Object to form.

21 Misrepresents his testimony.

22 You asked a long question related to what HBC  
23 was required to do versus what Giant Eagle was  
24 required to do. And that's what started this  
25 whole thing as to who had the requirements and who



1 was under the regulations. And that's what led to  
2 his answer that he's not a lawyer.

3 Putting an additional gloss on that and  
4 saying he's not comfortable answering certain  
5 questions -- he's told you that he is comfortable  
6 answering the compliance question, that he  
7 believes they were in compliance.

8 MR. BARTON: Right. I'm exploring why  
9 he's comfortable answering the question about why  
10 he knows they're in compliance and not comfortable  
11 answering questions what they're subject to.  
12 That's all. I'm just exploring what the basis for  
13 that is.

14 MR. KOBRIN: Yeah. And I'm just --

15 MR. BARTON: You can object to form all  
16 you want. I'm just seeing what the witness is  
17 willing to tell me.

18 MR. KOBRIN: My objection to form is  
19 that you're misrepresenting what he said and what  
20 he was comfortable and not comfortable doing.

21 MR. BARTON: I disagree. And if he  
22 thinks I've done that, he's free to ask me to  
23 rephrase.

24 BY MR. BARTON:

25 Q. All right. We don't need to belabor

1     this, but this exhibit that we're looking at right  
2     now, Exhibit 5, in terms of its content, does it  
3     describe, at least in part, part of what Giant  
4     Eagle was doing at some point in time in an  
5     attempt to meet obligations it believed it had  
6     under the 21 CFR 1301.74(b)?

7                 MR. KOBRIN:   Object to form.

8                 THE WITNESS:   In my nonlegal opinion,  
9     this would be one of the aspects we used in order  
10    to maintain compliance.

11    BY MR. BARTON:

12                Q.    And this aspect described in here, the  
13    first sentence of the second paragraph, let's look  
14    at that.  "Giant Eagle has created monthly  
15    ordering threshold levels for products based on  
16    GPI level reporting for controlled substances."

17                Did I read that correctly?

18                A.    Yes.

19                Q.    First of all, what is GPI level?

20                A.    GPI stands for generic product  
21    indicator.  The level would be at which the  
22    product is that level.  It's organized by GPI and  
23    not another level.

24                Q.    I guess I need to ask a little bit more  
25    about that just to understand it.

1           GPI level, how would GPI level help Giant  
2 Eagle -- would the GPI level be used to help  
3 create the threshold levels against which it was  
4 comparing monthly ordering?

5           A.    Yes.   Reviewing and analyzing at the GPI  
6 level rather than the NDC level is the more  
7 accurate way to look at any analytics regarding  
8 any medication, for that matter.

9           Q.    How so?   Like what's the difference  
10 between the GPI level and the NDC level?

11          A.    Under a single 14-digit GPI, you'll --  
12 you could have one brand NDC, which stands for  
13 National Drug Code, and many generic NDCs that all  
14 are therapeutically equivalent in nature.

15          Again, preface this I'm not a clinician, so  
16 that may be subject to interpretation.

17          Q.    Who assigns the GPI level to a given  
18 medication?

19               MR. KOBRIN:   Object to form.

20               THE WITNESS:   I don't know the answer to  
21 that question.

22 BY MR. BARTON:

23          Q.    All I'm trying to understand -- I don't  
24 think there's anything nefarious in it.   I'm just  
25 trying to understand what it is.

1 A. GPI is issued by Medi-Span.

2 Q. And who is that?

3 A. It's a subsidiary of Wolters Kluwer.

4 It's a data provider for the pharmaceutical  
5 industry cataloging.

6 Q. Got it. So GPI level is just a way to  
7 try to identify or capture a certain class or  
8 category of related products; is that fair?

9 A. That's a fair assessment, yes.

10 Q. And the reason it's better than NDC  
11 level is NDC level -- if you were just trying to  
12 count by NDC level, you might miss some generics  
13 that are presumed to be therapeutically equivalent  
14 and may be prescribed for the same reason as the  
15 brand NDC level; right?

16 MR. KOBRIN: Object to form.

17 THE WITNESS: Again, not a clinician,  
18 but yes.

19 BY MR. BARTON:

20 Q. I think I'm following now. So GPI level  
21 is better because it's hopefully more inclusive  
22 than NDC level; right?

23 A. Yes.

24 Q. So the first sentence then, "Giant Eagle  
25 has created monthly ordering threshold levels for

1 products based on GPI level reported for  
2 controlled substances," is that a statement that  
3 you think accurately reflects something that Giant  
4 Eagle did at some point in time?

5 A. Again, I don't know if this document was  
6 in draft form, final, or what the context was.  
7 But yes.

8 Q. And were you personally involved -- is  
9 one of the things you did personally was  
10 contribute to that creation of the monthly  
11 ordering threshold levels for products?

12 A. Yes, myself or my team.

13 Q. And is that part of the programming  
14 project that occurred that led to the generation  
15 of the daily threshold reports?

16 A. Again, this document was dated  
17 11/16/2014. We know that the threshold, daily  
18 threshold reports started in 2013 based on our  
19 earlier review.

20 So this statement would refer to that or some  
21 subsequent work associated to that analytics and  
22 reporting.

23 Q. Yeah. Absolutely fair enough. And I'm  
24 not trying to suggest that it only happened in  
25 November of 2014. I'm actually not concerned --

1 I'm not, for purposes of the question, focused on  
2 the date.

3 I understand why you're wanting to make sure  
4 you're aware of what time period we're talking  
5 about. But I'm just asking the question of you  
6 were involved in that project it describes.

7 A. In some capacity, yes.

8 Q. And that project of creating the monthly  
9 ordering threshold levels and the programming that  
10 related to that to generate those reports, that's  
11 the same thing we were talking about earlier that  
12 you were a part of and know it happened by 2013,  
13 but you can't say that it happened before 2013;  
14 correct?

15 A. Yeah. It's six years ago, so I'm not a  
16 hundred percent sure when the work started or when  
17 the first report was created.

18 But the programming work for the system and  
19 then the subsequent programming that went into  
20 future reports coming out of the system were  
21 partially responsible by me and/or somebody on my  
22 team.

23 Q. And the second sentence says, "Generated  
24 orders are compared against the threshold level  
25 established for each controlled substances

1     entity."   Correct?

2           A.    Yes.   That's what that sentence says.

3           Q.    And that kind of describes the, I  
4   guess -- does that describe what, in essence, the  
5   daily threshold reports were trying to reflect,  
6   that is, comparing generated orders against  
7   established threshold levels?

8           A.    Yes.

9           Q.    And that functionality required what  
10   technology to make that happen?

11                  MR. KOBRIN:   Object to form.   Do you  
12   mean when it initially happened or --

13   BY MR. BARTON:

14           Q.    So to generate an order -- excuse me --  
15   to compare an order that's been generated within  
16   the Giant Eagle HBC system, to compare an order  
17   with some established threshold level within the  
18   data, that requires what kind of technology?  
19   Excel?

20           A.    There's a whole line of technology  
21   that's involved in actually making all of that  
22   work.

23           Q.    Like what?   I mean, I don't know.   I  
24   can't program.   So what had to be done to allow  
25   that to occur?

1 MR. KOBRIN: Object to form. Are you  
2 referring to the 2013 system specifically or just  
3 as a general matter?

4 MR. BARTON: Well, I'm referring to that  
5 as a general matter right now. I'm not trying to  
6 limit it. We know what happened in 2013.

7 I'm trying to refer to what it takes to make  
8 that happen, is my question.

9 THE WITNESS: Restate the question  
10 exactly, and I'll --

11 BY MR. BARTON:

12 Q. What technology is required to have a  
13 system in which generated orders are compared  
14 against threshold levels established for each  
15 controlled substance?

16 A. You need a warehouse management system  
17 that captures invoices in EDI form and loads them  
18 into the database, and then another system, which  
19 we've described earlier, to harvest that data and  
20 information saved, and create reporting for  
21 business users to make more educated decisions.

22 Q. So is that it?

23 A. Likely not. But that, I think, gets you  
24 a large portion of what you need.

25 Q. The warehouse reporting or warehouse



1 management system that captures invoices in EDI  
2 form, did that system exist in 2013 within HBC and  
3 Giant Eagle?

4 A. I can't say for certain. I believe the  
5 answer is yes, but I'm not an IT person nor a  
6 warehouse person.

7 Q. And what is EDI form?

8 A. Again, not an IT person, but I believe  
9 it stands for electronic data interface. That's a  
10 guess though.

11 Q. What's the significance to you -- you  
12 used the term in saying you need that. What's the  
13 functional significance of EDI form for purposes  
14 of what we're talking about?

15 A. That's what generates the capturing of  
16 orders from stores to our wholesaler distribution  
17 partners.

18 Q. So as I understand it, stores would  
19 order controlled substances for their pharmacies  
20 from other wholesale distribution partners like  
21 McKesson or Anda; correct?

22 A. That's correct.

23 Q. But they also would order -- could order  
24 controlled substances, at least Schedule IIIs,  
25 that were -- that HBC was licensed to distribute

1 as well; correct?

2 A. Yes.

3 Q. So those orders would be placed directly  
4 to HBC; true?

5 A. Yes, but not a hundred percent of the  
6 time.

7 Q. And the exceptions to that would be  
8 what?

9 A. If the warehouse order had already been  
10 selected for that store for the day and they still  
11 had time to get an order in for a valid  
12 prescription from McKesson or Anda for next day  
13 delivery, they would place that subsequent order  
14 for a product that was at the GPI level at least  
15 in our warehouse.

16 Q. So without getting into all of the  
17 variations in that way that could occur in the day  
18 to day of trying to make sure that pharmacies got  
19 the product that they wanted and needed to meet  
20 their customers' needs, is it true that there were  
21 effectively orders placed by pharmacies, either to  
22 HBC or to a third-party wholesaler distributor,  
23 just depending on what the pharmacy needed?

24 A. Yes. That's a fair assessment.

25 Q. And since those orders are going to

1 different recipients, if you want to have a system  
2 in which you capture all of those orders,  
3 including ones going to a third party, you have to  
4 have some management system where you capture that  
5 data somehow; correct?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: If you want to run  
8 analysis on all of those different data points,  
9 yes, you'd have to have a way to capture all that  
10 information.

11 BY MR. BARTON:

12 Q. So the information about orders to HBC,  
13 directly to HBC, that information would be coming  
14 straight to HBC; right?

15 MR. KOBRIN: Object to form. I think  
16 asked and answered here. He explained.

17 THE WITNESS: Yeah. Ask it again. And  
18 if it's a redundant question, I'll answer it  
19 again.

20 BY MR. BARTON:

21 Q. It may be, but I'm not trying to be.

22 A. Yeah. I know. That's fine.

23 Q. I'm trying to simplify something that  
24 may not be as simple as I want it to be.

25 One universe of orders that Giant Eagle

1 retail pharmacies would place from time to time  
2 would be orders directly to the HBC warehouse as  
3 the distributor; is that right?

4 A. That is correct.

5 Q. And another universe of orders that they  
6 might place would be orders to a McKesson or an  
7 Anda, or some other wholesaler distributor;  
8 correct?

9 A. That's also correct.

10 Q. Were there any other universes of orders  
11 that they might place for controlled substances?

12 A. I can't think of them. These orders are  
13 aggregated and then kind of shoot out to the  
14 different wholesalers based on which wholesaler is  
15 responsible for managing that product.

16 Q. If you're trying to track all of the  
17 orders by a particular pharmacy for a certain  
18 category of drug, a certain GPI level, you're  
19 trying to capture all the orders in a given time  
20 period for a certain pharmacy, what technology did  
21 Giant Eagle need to capture those?

22 MR. KOBRIN: Object to form.  
23 Speculative.

24 THE WITNESS: I'm not an IT expert, so  
25 probably wouldn't answer your question accurately.

1 BY MR. BARTON:

2 Q. You don't think even in 2008 Giant Eagle  
3 had the technology to capture all of the  
4 information about the orders that its pharmacies  
5 were placing for its products wherever they were  
6 placing them; correct?

7 MR. KOBRIN: Object to form.

8 THE WITNESS: I can't --

9 MR. KOBRIN: You're saying he doesn't  
10 believe it?

11 MR. BARTON: No. I'm asking him did  
12 they.

13 BY MR. BARTON:

14 Q. Do you believe that Giant Eagle had that  
15 technology in 2008 to know what orders that all of  
16 its retail pharmacies were placing?

17 A. That's ten, eleven years ago. I'm not a  
18 hundred percent sure what was captured in every  
19 form, what system was used, and where it was all  
20 stored, unfortunately.

21 Q. It sounds to me like basic database  
22 technology. There's a certain number of retail  
23 pharmacies that Giant Eagle owns and cares how  
24 they perform in terms of costs and sales, stuff  
25 that shows up on the business plan; correct?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: Restate that, please.

3 BY MR. BARTON:

4 Q. Giant Eagle has control over its retail  
5 pharmacies. Do you agree?

6 A. Yes. All retail pharmacies are owned  
7 and operated by Giant Eagle.

8 Q. It tracks all kinds of financial data  
9 and information about the operation of each of  
10 those pharmacies; correct?

11 A. Yes.

12 Q. And it collects data about each of those  
13 pharmacies and stores it in large databases full  
14 of lots of data; right?

15 MR. KOBRIN: Object to form.

16 THE WITNESS: Yes. A lot of data is  
17 captured and a lot of data is stored.

18 BY MR. BARTON:

19 Q. And for a period of time you  
20 specifically -- one of your responsibilities for  
21 the company was to come up with ways to help  
22 analyze that data that Giant Eagle collects from  
23 all its pharmacies; right?

24 A. Yes. One of my jobs was analyst, so I  
25 did pull a lot of that information.

1 Q. And you're telling me that you're unable  
2 to testify that as of 2008, when you started doing  
3 data analytics for Giant Eagle, you're unable to  
4 testify that as of 2008, Giant Eagle could capture  
5 all of the data it needed to know what orders its  
6 retail pharmacies were placing for controlled  
7 substances?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: Can you restate that one  
10 more time.

11 BY MR. BARTON:

12 Q. In 2008, was Giant Eagle able to capture  
13 all of the data to show what orders its retail  
14 pharmacies were placing for controlled substances?

15 A. I believe we had good visibility to the  
16 data. In what form or what system, I can't really  
17 speak to that.

18 MR. KOBRIN: Break for lunch?

19 MR. BARTON: Sure.

20 THE VIDEOGRAPHER: Going off the record.  
21 The time is 12:49 p.m.

22 (Recess from 12:49 p.m. to 1:43 p.m.)

23 THE VIDEOGRAPHER: We're going back on  
24 the record. The time now is 1:43 p.m.

25

1 BY MR. BARTON:

2 Q. Mr. McClune, I'm going to ask you a few  
3 more questions about Exhibit 5. We'll keep that  
4 in front of you.

5 I want to try to ask just a cleaner question  
6 for you about 2008 and what data you believed  
7 Giant Eagle was capturing from its retail  
8 pharmacies that relates to what we're talking  
9 about in Exhibit 5.

10 As of 2008, when you joined Giant Eagle, was  
11 Giant Eagle able to electronically capture data  
12 about what quantities of controlled substances at  
13 a GPI level a single pharmacy was ordering in a  
14 given month?

15 A. Yes. That data would have been  
16 available in some capacity.

17 Q. The process that's described in  
18 Exhibit 5 of monthly ordering thresholds and so  
19 forth that we've been going through, I wanted to  
20 ask you a few more things about it.

21 The second sentence, we were focusing on  
22 that, "Generated orders are compared against the  
23 threshold level established for each controlled  
24 substance entity."

25 That comparison of orders to a threshold



1 level that's been established, that was part of  
2 the system that you helped create at least as of  
3 2013; right?

4 A. Yes.

5 Q. And my question first is: With  
6 reference to the threshold levels that that's  
7 talking about, did someone have to decide what  
8 threshold level to choose to be the basis for  
9 comparison with orders?

10 A. Someone would have to choose the  
11 calculation method. Our team would have to choose  
12 the calculation method in which those thresholds  
13 would be set.

14 Q. So do you know who chose or set the  
15 threshold levels to use for this program described  
16 in Exhibit 5?

17 A. I do not know the specific person or  
18 team that would have assisted.

19 Q. You were involved and your team were  
20 involved in actually writing the code that kind of  
21 implemented the threshold level so that reports  
22 could be generated using that threshold level;  
23 right?

24 A. Yes. That's correct.

25 Q. So someone gave to you or told you, this

1 is the threshold level or this is how we want to  
2 set the threshold level in the system?

3 A. I'd be speculating, but -- so no.

4 MR. KOBRIN: Don't speculate.

5 BY MR. BARTON:

6 Q. Yeah. That's good. If you don't know  
7 or don't remember, that's fine. I'm wanting to  
8 know what you know.

9 Did you, Bob McClune, did you decide what  
10 threshold level should be used to compare orders  
11 against for purposes of this program?

12 A. What date and time are we referring to?

13 Q. At the time that the code was written to  
14 generate reports that were the daily threshold  
15 reports.

16 A. So no, not me personally.

17 Q. Do you know what that threshold level  
18 was, like what it was based on?

19 A. I can't quote exactly. So I don't know  
20 off the top of my head.

21 Q. Do you know if the same threshold was  
22 used for every Giant Eagle pharmacy?

23 A. I do believe that to be correct, yes.

24 Q. And was it based on a companywide  
25 average, based on kind of the quantities sold or

1 ordered by all Giant Eagle stores?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: To confirm, are you  
4 referring to the threshold or the orders?

5 MR. BARTON: The threshold.

6 THE WITNESS: The threshold used a  
7 companywide average.

8 BY MR. BARTON:

9 Q. And do you know, was it an average based  
10 on sales of a GPI level or orders? Do you know?

11 A. It was orders.

12 Q. And the companywide average that was  
13 used, was that an average that was fixed for a  
14 given period of time, or did it change every  
15 month?

16 Was it like a rolling average?

17 A. It was based on a rolling average.

18 Q. So it would apply for a month and then  
19 reset and recalculate based on the preceding  
20 12 months' companywide average for orders?

21 A. Yes.

22 Q. Do you know whether Kayla chose that  
23 threshold?

24 MR. KOBRIN: Object to form.

25 THE WITNESS: I don't know.

1 BY MR. BARTON:

2 Q. Do you know how long that threshold was  
3 used for purposes of this program of comparing  
4 retail store orders against a threshold as part of  
5 the suspicious order monitoring program?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: I believe it was in  
8 production through January of 2016.

9 BY MR. BARTON:

10 Q. Were you involved in any of --

11 A. Let me rephrase that. I think it's  
12 January of 2017.

13 Q. 2017. Okay.

14 A. Sorry. I just wanted to make sure I had  
15 the right date, year on that.

16 Q. That's fine. Were you involved in any  
17 discussions about changing the threshold?

18 A. We constantly worked on enhancing the  
19 whole threshold and controlled substance  
20 compliance program that Giant Eagle managed, which  
21 included controls at the warehouse, controls at  
22 retail.

23 This added system to look at thresholds isn't  
24 explicitly stated in the DEA regs, but we thought  
25 it would be a redundant added process. We

1 continued to add to and augment.

2 Q. I don't think that answered my question.

3 I'm just asking: At the time that the threshold  
4 part of this program --

5 A. Okay.

6 Q. -- I'm not suggesting it's the entire  
7 program. But at the time that the threshold part  
8 of this monitoring program was changed, were you  
9 involved in the discussions about changing it?

10 A. Yes. I was involved in discussions  
11 about changing this program and future iterations  
12 of it.

13 Q. And who else was involved in those  
14 discussions?

15 A. Definitely George Chunderlik. I can't  
16 recall any other specific parties.

17 Q. Did those discussions start prior to  
18 January 2017?

19 A. Yes. We continually talked about  
20 compliance, controlled substance compliance, this  
21 being one of the aspects of it. So, yes, we  
22 discussed it on a periodic basis throughout time.

23 Q. Did you have some concerns yourself,  
24 just personally, about whether the companywide  
25 average threshold that was being used for this

1 purpose, this part of the suspicious order  
2 monitoring program, that the companywide average  
3 threshold was not optimal?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: Can you restate the  
6 question?

7 BY MR. BARTON:

8 Q. Yeah. Did you have personal concerns at  
9 any time that the companywide average threshold  
10 was being used as the threshold in this program?

11 Did you have personal concerns that that was  
12 not the optimal threshold to use?

13 A. I didn't have any concerns about that  
14 not being the optimal threshold.

15 Q. Do you recall any conversations or  
16 communications, maybe in 2013 or 2014, about  
17 whether that threshold should be used or continues  
18 to be used as it was?

19 A. I don't recall any specifics.

20 Q. Would you agree that a companywide  
21 threshold which is used for this purpose to just  
22 provide some line against which orders from a  
23 given store are compared to see if they fall over  
24 the line or not, would you agree that a  
25 companywide average, as a threshold, has a

1 weakness in terms of its applicability to stores  
2 within the Giant Eagle system that routinely are  
3 based on their own characteristics well below or  
4 well above the company average for sales?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: Can you restate?

7 BY MR. BARTON:

8 Q. Yeah. Bad question. Let me ask a  
9 different question.

10 A. Okay. That's fine.

11 Q. If you use a company average as your  
12 threshold -- you have to choose some threshold,  
13 right, if that's what you're going to do, is  
14 compare orders against a threshold?

15 If you use a company average as a threshold,  
16 one thing that you aren't doing then through that  
17 is comparing a store's ordering patterns to  
18 itself; true?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: I mean, if you're using a  
21 companywide average, no, you wouldn't be looking  
22 at just solely the store's history.

23 BY MR. BARTON:

24 Q. Right. Those two things are mutually  
25 exclusive. If what you're looking at is comparing

1 the store to the company average, you're not  
2 comparing that store to itself; right?

3 A. Correct.

4 Q. So, for example, if you had a small  
5 store relative to the company average -- and there  
6 were such stores, I assume, in the Giant Eagle  
7 system; right?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I'd have to see the data,  
10 but you're going to have some high-performing and  
11 lower-performing stores.

12 BY MR. BARTON:

13 Q. So if you had a smaller store relative  
14 to company average, then always comparing that  
15 store's orders to the company average might never  
16 reveal a pattern occurring within that store's  
17 orders that might deviate or change, but never  
18 reach the threshold.

19 That could happen; right?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: There are still other  
22 processes in place that would catch those  
23 abnormalities. This check was just an additional  
24 redundant check.

25



1 BY MR. BARTON:

2 Q. Well, I understand. So my question  
3 though is just whether you agree that could happen  
4 under a system where you're using a threshold  
5 that's based on the company average.

6 MR. KOBRIN: You're saying only?

7 BY MR. BARTON:

8 Q. I'm just talking about the data  
9 analytics part of the program. I think your  
10 answer was to say, well, we had other things in  
11 place. And we can talk about -- we'll talk about  
12 those in a minute.

13 But just focusing on this piece that is  
14 described in Exhibit 5, kind of the data analytics  
15 piece, if your data analytics piece of this  
16 program uses a company average, then one thing  
17 that could happen is that you could have a  
18 low-performing -- I want to use that word -- or  
19 just say a low-volume store that might have  
20 unusual patterns within its ordering on a  
21 controlled substance, but never reached the  
22 threshold of the company average simply because  
23 it's a smaller store.

24 That could happen theoretically; correct?

25 MR. KOBRIN: Object to form.

1 Speculative.

2 THE WITNESS: Yeah. I'd have to see the  
3 data to validate that.

4 BY MR. BARTON:

5 Q. Yeah. I'm asking hypothetically. I  
6 mean, I'm asking if you believe, based on how the  
7 system worked, that's a possibility. I'm not  
8 asking whether you know whether it happened or  
9 not.

10 That's one possibility if you're using just  
11 the company average as your threshold; would you  
12 agree?

13 MR. KOBRIN: Same objection.

14 THE WITNESS: I wouldn't know for sure.

15 BY MR. BARTON:

16 Q. Regardless, I mean, I'm not -- you've  
17 testified you are confident you aren't the one  
18 that said, let's use company average as our  
19 threshold for purposes of this part of the system;  
20 correct?

21 MR. KOBRIN: This part of the system  
22 being the document?

23 MR. BARTON: What's described in  
24 Exhibit 5, the suspicious order monitoring program  
25 described in Exhibit 5.

1                   THE WITNESS: And do we have a specific  
2   report this refers to though? Because the way I  
3   read this, it's more than just that one single  
4   daily threshold document.

5   BY MR. BARTON:

6           Q. Well, I've been focusing on, I guess,  
7   the first three sentences of the second paragraph  
8   and what's kind of described there, which I  
9   understand to be the piece that you had some  
10  involvement in helping to create and develop.

11          A. The third sentence refers to the daily  
12  threshold report is generated to notify  
13  corporate-level personnel as to which registrant  
14  store has items in a given order that exceed an  
15  ordering threshold.

16          The other two sentences refer to more broad,  
17  which would include not only the daily threshold  
18  report referred to in sentence 3, but other  
19  thresholds and management SOPs that would identify  
20  orders of abnormality.

21          Q. So your testimony is that -- the way you  
22  read the second paragraph is that the first two  
23  sentences, when using the word "threshold," it may  
24  refer to other thresholds within the company or  
25  applied by the company, not just the one that was

1 coded into the system to generate the daily  
2 threshold report.

3 A. I mean, again, this document is taken  
4 out of context. I don't know what it's exactly  
5 attached to in this particular sense.

6 Our threshold management and suspicious order  
7 monitoring program transcended all aspects of  
8 Giant Eagle. The threshold management, which  
9 isn't even a requirement by the DEA, was put in  
10 place to be a redundant check against already  
11 existing processes and procedures.

12 Q. For whatever reason it was put into  
13 place, at some point Giant Eagle decided to add  
14 that to its suspicious order monitoring program;  
15 correct?

16 A. Yes, at some point.

17 Q. Let me just ask: What is the value  
18 of -- to you, as a data analytics person who has  
19 worked in that area, what value is there of using  
20 a data analytics tool like that for purposes of  
21 suspicious order monitoring?

22 A. In what context?

23 Q. In the context of Giant Eagle and HBC  
24 wanting to comply with its obligations under the  
25 Controlled Substances Act.

1 MR. KOBRIN: Object to form.

2 THE WITNESS: It was our continued will  
3 to enhance existing processes and procedures.

4 What year are we talking about here?

5 BY MR. BARTON:

6 Q. I guess at any time that it was subject  
7 to the Controlled Substances Act. So at any time.

8 A. So from 1970 to present?

9 Q. Yeah. What value did adding data  
10 analytics to that program add?

11 A. As systems continue to enhance, hardware  
12 improved, applications improved, there was a  
13 heightened sense of awareness around controlled  
14 substance and controlled substance management,  
15 which we took continued action to improve our  
16 existing systems.

17 Q. So one part of the system that others  
18 have testified about is that, for example,  
19 employees in the HBC warehouse, sometimes called  
20 pickers, might develop some familiarity with  
21 ordering patterns by specific pharmacies.

22 You think that's probably true?

23 A. Yes.

24 MR. KOBRIN: Object to form.

25

1 BY MR. BARTON:

2 Q. And so those pickers might perceive a  
3 deviation in an ordering pattern just at the time  
4 that they're filling orders physically by picking  
5 things out of bins and putting them into totes, or  
6 whatever they would use, to send them to retail  
7 pharmacies; right?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I'm not in charge of the  
10 warehouse, so I'm not exactly sure what their  
11 practices are. But I'm -- you know, I'm sort of  
12 not comfortable speculating, but --

13 BY MR. BARTON:

14 Q. Do you think that piece -- I'm not  
15 suggesting that was exclusive either of the entire  
16 program.

17 But do you think that was part of Giant Eagle  
18 and HBC's suspicious order monitoring program?

19 A. It certainly was.

20 Q. And what weaknesses did that have as  
21 part of the suspicious order monitoring program?

22 MR. KOBRIN: Object to form. No  
23 foundation.

24 BY MR. BARTON:

25 Q. In your view.

1 MR. KOBRIN: Object to form.

2 THE WITNESS: You can pick at any one of  
3 these pieces and find flaws. It's the combination  
4 of all the pieces together working in coordination  
5 that gives you a tight set of controls and  
6 security as explained by the regulation.

7 BY MR. BARTON:

8 Q. No question. But it's the pieces that  
9 you have and how tight each of them are that  
10 really determines whether your system is tight  
11 enough to comply with the law or not; right?

12 MR. KOBRIN: Object to form.  
13 Argumentative.

14 MR. BARTON: The answer was  
15 argumentative.

16 BY MR. BARTON:

17 Q. Yeah, you're right. You can have as  
18 many pieces as you want to try to meet your burden  
19 to comply. But they either collectively do or  
20 they don't; right?

21 MR. KOBRIN: Object to form.

22 BY MR. BARTON:

23 Q. Isn't it fair for us --

24 A. It's an opinion.

25 Q. -- to at least -- isn't it fair for us

1 to talk about each piece and just see what its  
2 strengths and weaknesses are?

3 That seems like a reasonable thing for a  
4 business to do when it's thinking about are we  
5 complying with the law or not.

6 MR. KOBRIN: Object to form.  
7 Argumentative.

8 He said that he doesn't feel necessarily  
9 qualified to talk specifically about those  
10 warehouse pieces. He knows that they existed. He  
11 knows they were part of the SOM process.

12 BY MR. BARTON:

13 Q. Do you have any familiarity with the  
14 picker piece as far as what they actually do day  
15 in and day out, what they get exposed to?

16 A. The warehouse pickers do not report up  
17 to me, so no.

18 Q. Right. So you don't know what it's like  
19 to be a picker and what they see and what they  
20 don't see; fair?

21 A. No. We rely on other management staff.

22 Q. And your job with Giant Eagle, really  
23 from the time that you were hired on in various  
24 capacities, involved, in large respects, the  
25 analysis of data to help Giant Eagle do what it



1 was trying to do; right?

2 A. I would agree with that assumption.

3 Q. Because that's where your skill set  
4 really rested, was in data analytics and figuring  
5 out how to draw the right information and  
6 conclusions from data; correct?

7 A. Yes.

8 (HBC-McClune Exhibit 6 was marked.)

9 BY MR. BARTON:

10 Q. Let's move on to a new exhibit. I hand  
11 you Exhibit 6. I won't spend a lot of time on  
12 this.

13 This is a multi-page document. First page is  
14 HBC\_MDL00076207, and our reference number is  
15 P-HBC. Do you see that?

16 A. Yes.

17 Q. This document appears to have at the top  
18 of the first page another one of the meeting  
19 notifications that we've seen before with an  
20 organizer of Dominic Bertucci.

21 And you are listed among the recipients of  
22 that; is that correct?

23 A. Yes. I see my name on there.

24 Q. This document appears to, then below,  
25 have a message from Dominic to several people.

1     You're not on that list.

2             But the message appears to relate to getting  
3     ready for a VAWD physical inspection on August 31,  
4     and we are now in 2015 here.

5             Do you see that?

6             A.     I do see that.

7             Q.     Now, does this document and the things  
8     that are behind it, does it appear to relate to  
9     efforts by the company to prepare for VAWD  
10    inspections and, hopefully, certifications of the  
11    GERX warehouse facility? Do you know?

12            A.     This is August 17, 2015. So at that  
13    point in time the GERX warehouse was not in  
14    operation. Am I right on that? In the wrong  
15    year.

16            Q.     Not yet in operation perhaps?

17            A.     Hold on.

18                   MR. KOBRIN: Do you have anything you  
19    can show him to refresh his memory on that?

20                   MR. BARTON: Yeah. Well, I have some  
21    other stuff that we can get to that all fall into  
22    the same context.

23                   And, really, I'm not trying to trick him.  
24    I'm trying to separate -- there was a VAWD  
25    certification process that we talked about

1 relating to HBC. And I think he testified already  
2 that that kind of didn't come to completion and  
3 stopped, but then we have more picking up in 2015.

4 And I'm just basically --

5 MR. KOBRIN: Do you have a reason for me  
6 to believe this is GERX?

7 MR. BARTON: I do, I guess.

8 MR. KOBRIN: Do you have a reason to  
9 believe this is GERX?

10 MR. BARTON: No.

11 MR. KOBRIN: I just know that he wants  
12 to make sure that his testimony is completely  
13 accurate.

14 If you can refresh him with an additional  
15 document, that might help, and then he'll know  
16 whether he's right or not.

17 BY MR. BARTON:

18 Q. Well, let's just go on. Let me just ask  
19 you about this Exhibit 6.

20 A. Sure.

21 Q. I truly was actually just trying to make  
22 sure I wasn't confused, and I may be, and I'm not  
23 helping. So let me just ask you whether --

24 A. No. That's fine.

25 Q. -- you recall anything about this

1 particular meeting in this timeframe and what's  
2 being discussed here.

3 A. No, not for this specific meeting. I  
4 remember VAWD.

5 Q. Right. Okay. So I guess I will just  
6 ask you this question: Do you remember VAWD being  
7 an issue or initiative both with respect to the  
8 HBC warehouse and with respect to the GERX  
9 facility?

10 A. Yes. So at this point in time, if I  
11 have my years right, and I do believe I do, we had  
12 approval to move the warehouse, closing HBC,  
13 opening GERX.

14 We had already done most of the paperwork for  
15 VAWD knowing that we had a deficiency in climate  
16 control at HBC, but thought it was in our best  
17 interest to go through the exercise, since most of  
18 the work for VAWD is paperwork, validate that we  
19 passed at HBC with the exception of the climate  
20 control so we'd be ready for inspection at the  
21 other facility.

22 Q. Okay. I think that helps.

23 And let me mark the next exhibit, and that  
24 may clear this all up.

25 A. So we're done with 5 or 6?

1 Q. Yeah.

2 (HBC-McClune Exhibit 7 was marked.)

3 BY MR. BARTON:

4 Q. I'm handing you Exhibit 7. This is a  
5 multi-page document. First page is  
6 HBC\_MDL00069566.

7 This document has some emails. And I would  
8 direct you to the second email down on the first  
9 page, so the one that's kind of in the middle of  
10 the page, from Joseph Millward on Thursday,  
11 August 20, 2015.

12 Do you see that?

13 A. Yes. I see it.

14 Q. And you are one of the recipients of  
15 this email; correct?

16 A. Yes, I am.

17 Q. And the subject of it is Thrifty White  
18 Notes. Do you see that?

19 A. I do see that.

20 Q. And if we turn the page to the second  
21 page, there's an email that appears to be from  
22 you, also August 20 in the morning, also with the  
23 same subject Thrifty White Notes.

24 And you're saying, "Team, I want to send a  
25 note out regarding our trip to Thrifty White

1 yesterday in conjunction with the planned  
2 warehouse move of all the refrigeration."

3 Do you see that?

4 A. I do see that.

5 Q. So we're in the same kind of timeframe.  
6 August 20, 2015 is what we were just looking at,  
7 which I think was August 17.

8 Does this refresh any recollection about what  
9 was happening at that period of time?

10 A. The exact contents of this, I won't be  
11 able to speak to exactly without further review,  
12 but I do remember this time period.

13 Q. Do you remember, for example, taking a  
14 trip to Thrifty White to, you know, meet with them  
15 and look and see what they were doing in their  
16 warehouse or pharmacy operations?

17 A. I do.

18 Q. And was that in Denver?

19 A. No.

20 Q. I might be confused there. Where did  
21 you go Thrifty White? Where was that?

22 A. They're headquartered just outside of  
23 Minneapolis.

24 Q. What was the purpose of you sending this  
25 team the email that you did with Thrifty White

1 notes?

2 A. So the email was to four team members  
3 who accompanied myself on the trip. And the cc  
4 line includes other respective parties that would  
5 be interested in the information and the findings  
6 from that trip.

7 Q. And the overall context for you taking a  
8 trip to Thrifty White was what? What were you  
9 trying to accomplish?

10 MR. KOBRIN: Feel free to read it over  
11 if you want to refresh yourself.

12 THE WITNESS: So in preparation for our  
13 move from the HBC warehouse to the GERX warehouse,  
14 we were looking at expanding our refrigeration  
15 capabilities and building a controlled substance  
16 vault to add to our existing CIII to V cage, which  
17 we had at the other HBC facility.

18 Thrifty White ran and operated both, well, I  
19 guess vault cage and refrigeration. And we're a  
20 noncompeting share partner with them, so at times  
21 we share information about our operations.

22 BY MR. BARTON:

23 Q. So, in general terms, were you visiting  
24 with maybe a peer or another organization's  
25 operations that were sufficiently analogous to

1     what Giant Eagle was considering doing, that you  
2     were just gathering information you thought could  
3     be helpful for Giant Eagle?

4           A.     Yes.   That's a fair assumption.

5           Q.     And were you in your role on this  
6     team -- well, I'll just ask it.

7           What was your role on this team of people who  
8     went to Thrifty White?

9           A.     So this is August 20 of 2015.   I took  
10    the senior category manager position effective 8/2  
11    of 2015.   So I'm 18 days on the job when this  
12    email was sent.   I assume the trip was a day or  
13    two prior.

14          So I was in charge of procurement as -- on  
15    the trip.   We also had an IT person, a warehouse  
16    person -- actually, two warehouse people, one  
17    compliance person, and one IT person on the trip  
18    with me.

19          Q.     So let's just identify who was who, to  
20    help me.

21          You were procurement, I think you said.

22          A.     Yes.

23          Q.     So there was a compliance person on the  
24    trip.   That was who?

25          A.     Joe Millward.



1 Q. And did you say there was an IT person?

2 A. Yes. Philip Raub.

3 Q. And then Walt Durr was on the trip?

4 A. Yeah, in addition to Christy --

5 Q. Christy Hart.

6 A. -- Hart.

7 Q. And what were Walt Durr's and Christy  
8 Hart's responsibilities, roles?

9 A. I don't know their exact titles at this  
10 time. Walt Durr was responsible for overseeing  
11 the HBC warehouse. And Christy Hart was  
12 supervisor of the pharmacy portion of the HBC  
13 warehouse at that point in time.

14 Q. And so taken in combination, your email  
15 to the team -- well, let me just direct you to it.

16 It appears that in your second paragraph of  
17 your email -- I'm looking on page 2 -- you say,  
18 "Please chime into this email string with your  
19 Thrifty White notes. Don't worry about  
20 duplication, just brain dump."

21 Do you see that?

22 A. I do see that.

23 Q. So, in essence, you were asking the team  
24 to share with the team all of the notes that any  
25 team member may have taken on that visit so

1 everybody could have access to the full  
2 information?

3 A. Yeah. That's correct. There were a lot  
4 of conversations, and they do a lot of things that  
5 we were interested in or we had been considering.  
6 And it was a great share opportunity for the  
7 teams.

8 Q. And so Joe Millward responded to your  
9 email that afternoon. And as you asked, he said,  
10 "Here are my notes."

11 And he wrote them and shared them with the  
12 team; correct?

13 A. Can you say that one more time. Sorry.  
14 I was trying to catch up.

15 Q. Joe Millward's email that starts on  
16 page 1 was a -- appears to have been a response to  
17 your request to chime into this email string with  
18 your Thrifty White notes.

19 Would you agree?

20 A. I would agree. He sent it about five  
21 hours later.

22 Q. And that's what his email is, is just,  
23 "Here are my notes." And it's the same Thrifty  
24 White visit; right? Do you agree?

25 A. I would -- I agree.

1           Q.     In his second paragraph he says, in his  
2     notes, he says, "It is critical to have a robust  
3     suspicious order monitoring program."

4           One, do you agree with that statement just as  
5     a general proposition?

6           A.     Yes. I agree.

7           Q.     And the next statement that he has in  
8     his notes to the team is in quotes. And it says,  
9     "Relying on threshold is not good enough for the  
10    DEA," end quote.

11          Do you see that?

12          A.     Yeah. I do see that.

13          Q.     Do you interpret that statement in  
14    quotes, in this context, as a statement from Joe  
15    to the team that, you know, was more or less  
16    quoting something told to him by someone at  
17    Thrifty White on that visit?

18                 MR. KOBRIN: Object to form.

19                 THE WITNESS: I can't say for sure his  
20    use of quotes in that particular case.

21    BY MR. BARTON:

22          Q.     That's fine. You didn't write it. I  
23    just wondered what you might glean from that  
24    statement.

25          Suffice it to say, that second paragraph,

1 kind of in its entirety, deals with suspicious  
2 order monitoring; correct?

3 A. Bear with me one minute while I read it.

4 Q. Sure.

5 A. Okay. Can you ask your question again.

6 Q. Yeah. Really, the whole second  
7 paragraph of his notes, does that just concern  
8 kind of the subject of suspicious order monitoring  
9 procedures or policies?

10 A. I would agree that it's one -- it's some  
11 of the aspects they may have used.

12 Q. And that subject was within Joe's real  
13 area of interest as being the compliance person on  
14 the trip.

15 Would you agree?

16 MR. KOBRIN: Object to form.

17 THE WITNESS: It's one of the interests  
18 from the trip. We were inspecting or having an  
19 opportunity to see all aspects.

20 So it's not the only, but it was one of the  
21 things he was interested in as part of the trip.

22 BY MR. BARTON:

23 Q. Right. And I noted, and it didn't  
24 surprise me, that your notes from the trip don't  
25 appear to have anything about discussions

1 concerning suspicious order monitoring, or at  
2 least I didn't see them. And that's not a  
3 criticism.

4 I'm just trying to see if I'm right in that  
5 Joe included that in his notes because he was  
6 focused on that as the compliance person on the  
7 trip.

8 A. Yeah. Everyone had a different focus.

9 Q. And his was compliance; correct?

10 A. He was in charge of compliance at that  
11 time, yes.

12 Q. So he's kind of addressing one of the  
13 things he picked up about compliance on the trip.

14 That seems like a fair way to read that; is  
15 that true?

16 MR. KOBRIN: Object to form.

17 There are numerous other paragraphs here on  
18 which are itemized -- most of which relate to  
19 compliance other than that one.

20 THE WITNESS: And there's a lot of  
21 context in here. I mean, there were a lot of  
22 conversations that happened.

23 That paragraph you read is one of the things  
24 that he highlighted from his conversations on the  
25 trip.

1 (HBC-McClune Exhibit 8 was marked.)

2 BY MR. BARTON:

3 Q. I hand you Exhibit 8. This is a  
4 document with the first page Bates No.  
5 HBC\_MDL00169475. And our reference number is  
6 HBC 1198.

7 Does this appear to you to be an email plus  
8 an attachment to the email that was sent from Joe  
9 Millward on Friday, August 28, 2015 to you and, it  
10 looks like, three other people -- well, four  
11 including George Chunderlik.

12 A. Yes. It appears to be an email with an  
13 attachment sent to those people.

14 Q. Do you believe this to be an email that  
15 you received at Giant Eagle on that day?

16 A. Yeah. We can -- I'll agree that it  
17 definitely landed in my inbox.

18 Q. But I'll ask you anyway. Do you recall  
19 receiving this?

20 A. This specific email, no. I get 400 to  
21 500 emails a day.

22 Q. Is this -- well, what does this email  
23 do? What's he conveying to the recipients?

24 MR. KOBRIN: Object to form.

25 Do you want him to just interpret the email

1 from reading it now? If he has no recollection of  
2 it, I'm not sure what the value of that is.

3 BY MR. BARTON:

4 Q. Would you agree that in this email  
5 Mr. Millward is sending an attachment, and he says  
6 in the first line, "Here is the policy we  
7 submitted for VAWD"?

8 Do you agree with that?

9 A. I read the first sentence. It does say  
10 that, yes.

11 Q. And do you believe that the policy we  
12 submitted for VAWD is in reference to the attached  
13 two-page document?

14 A. It looked like his statement and the  
15 document are related, yes.

16 Q. And so do you know why he was forwarding  
17 that to you and the other recipients on August 28?

18 A. Based on his email, it looks like it's  
19 an FYI.

20 Q. And why might he have been sending it as  
21 an FYI at this period of time? Do you know?

22 MR. KOBRIN: If you know.

23 THE WITNESS: I'd be speculating.

24 BY MR. BARTON:

25 Q. In the second, I guess, paragraph, at

1     least the line that starts, "We have threshold  
2     monitoring...", do you see that?

3             A.     I do see that.

4             Q.     He says, "We have threshold monitoring  
5     that uses an average company movement for each  
6     scheduled chemical entity."

7             Correct?

8             A.     Correct.

9             Q.     And we've already gone over that. But  
10    would you agree, that kind of accurately describes  
11    at least that aspect of threshold monitoring by  
12    the company at that time? True?

13            A.     I agree that that is one of the aspects  
14    used for threshold monitoring at that time, yes.

15            Q.     And in terms of any generation of daily  
16    threshold reports within the company at that time,  
17    that was the only threshold used for that purpose;  
18    correct?

19            A.     Restate that.

20            Q.     Yeah. Would you agree that was the only  
21    threshold, that is average company movement, that  
22    was the only threshold being used for purposes of  
23    generating those daily threshold reports at that  
24    time?

25            A.     That was the only threshold used in the



1 daily threshold report, yes.

2 Q. And he says -- continues, "...but the  
3 thresholds are not customized to individual store  
4 movements."

5 Do you see that?

6 A. I do see that.

7 Q. And does that also accurately reflect  
8 how the thresholds were used for purposes of  
9 generating the daily threshold reports at that  
10 time?

11 A. Yes. Because it's not customized by  
12 store. The store is picked up in some of these  
13 subsequent bullets that he has listed on here.

14 Q. And then the last sentence at the bottom  
15 of his main paragraph there says, "Team members at  
16 the distribution center identify unusual pick  
17 quantities and escalate the flagged items to the  
18 facility supervisor who escalates the issue to the  
19 G pharmacy team."

20 Did I read that correctly?

21 A. Your dictation is accurate.

22 Q. And is he also then in that part of his  
23 email describing that part of a suspicious order  
24 monitoring program that the company was using at  
25 the time?

1           A.    I agree, but you did skip over these  
2   other two points on here.

3           Q.    I did. And we can go over them. I was  
4   just referring to the one we had already talked  
5   about, and, actually, my colleague may ask you  
6   some things about Supplylogix. So I was just  
7   trying to save some questions for her.

8           In fairness, there's two additional points in  
9   this email describing Supplylogix and its  
10   functionality in terms of trying to also help in  
11   the suspicious order monitoring program; is that  
12   true?

13          A.    Yes.

14          Q.    So when he sent this email attaching  
15   this policy, this written policy that he says was  
16   submitted for VAWD, and then the remainder of his  
17   email, which he leads by saying, "The execution  
18   occurs as follows," do you think that email in its  
19   entirety kind of -- fairly summarizes the  
20   execution of Giant Eagle's suspicious order  
21   monitoring program at this point in time?

22          A.    From the perspective of the warehouse,  
23   it's still lacking the inventory receipt, the  
24   incoming product, the on-hand counts, the invoices  
25   going out.

1           So there are other things that we're doing  
2   that aren't included in his email here.

3           Q.    Other things, you're referring to other  
4   things that happened at the warehouse? Is that  
5   what you're referring to?

6           A.    I was using the warehouse as a  
7   perspective. There were other things. They had  
8   retail counts, daily counts on certain substances,  
9   prescription drug monitoring at retail looking for  
10   bad docs, bad patients, et cetera.

11          Q.    Understood. And I understand you to  
12   be -- kind of when you expanded that and described  
13   more things, aren't you kind of talking about  
14   really controlled substance monitoring and  
15   controls, broadly?

16          Not just suspicious orders for a distributor;  
17   fair?

18          A.    We're really going after interpretation  
19   of the exact way it's written, not necessarily the  
20   contextual feeling at the time.

21          There's -- many of those terms can be used  
22   interchangeably, so I don't want to limit the  
23   scope by saying this is everything we do for that.

24                   (HBC-McClune Exhibit 9 was marked.)

25

1 BY MR. BARTON:

2 Q. I'm handing you Exhibit 9, which is just  
3 a one-page document, HBC\_MDL00169466, and our  
4 reference HBC 1248.

5 You have Exhibit 9 in front of you?

6 A. Yes. I have Exhibit 9. Sorry.

7 Q. Not a problem. Does the top email  
8 appear to be an email from you, on Friday,  
9 August 29, 2015 at the time of 16:41:46, to Joe  
10 Millward, Erin Hart, Philip Raub, and John Hutten,  
11 copying George Chunderlik?

12 A. Yes.

13 Q. And was this an email that you sent to  
14 them responding to the email we just looked at as  
15 Exhibit 8 from Joe Millward?

16 A. Yes. It appears to be in direct  
17 response to the previous email.

18 Q. And you say in the email after "Thanks,  
19 Joe," "I would say the highlighted below need to  
20 be further developed, especially the team member  
21 discretion one."

22 Correct?

23 A. Yeah. I see that, but I can't see the  
24 highlight.

25 Q. I can't either, and that may be just an

1 artifact of digital saving and reproduction.

2 So that was going to be my question,  
3 initially, is: Do you know what you highlighted  
4 at this point in time when you look at this email?

5 A. I wish I could say I did. That would  
6 help. But I can't tell.

7 Q. Suffice it to say, it would appear that  
8 you had highlighted something below and expressed  
9 your opinion that there was a need to further  
10 develop that which you highlighted; correct?

11 A. It would be safe -- per this email, it  
12 looks like I'm recommending that. I can't tell  
13 which part or parts.

14 Q. And as you sit here, you don't recall  
15 what you thought from the email below needed to be  
16 further developed at the time you sent that email.

17 A. No. I don't recall.

18 Q. You especially call out the team member  
19 discretion one; true?

20 A. Yes. It does say team member  
21 discretion.

22 Q. And so that's a reference to that last  
23 sentence in his email there about team members at  
24 the distribution center identify unusual pick  
25 quantities; right?

1           A.     Can't say for sure. Because the other  
2     items also may contain discretion that would be  
3     interpretation of team members. So I'd be  
4     speculating if I confirmed what you said.

5           Q.     Well, at a minimum, you would agree that  
6     the last item that Joe had talked about, the team  
7     members at the distribution center identifying  
8     unusual pick quantities, that, as he describes it,  
9     that process would involve team member discretion.

10          Would you agree?

11          A.     I'm not certain, because I wasn't  
12     responsible for the warehouse at the time. For  
13     all I know, they had guidelines on what they had  
14     to flag or not flag.

15          Q.     Well, do you know one way or the other  
16     whether they had guidelines on what to flag or not  
17     flag?

18          A.     No. I wish I did. I don't, no.

19          Q.     So, I mean, that -- so as you sit here,  
20     you aren't sure, when you said team member  
21     discretion, on what you were referring to below.  
22     Is that what your testimony is?

23          A.     Yeah. I can't -- because it's not  
24     highlighted, I can't see what's highlighted, and I  
25     don't recall this email specifically, I can't tell

1     you.  It's been three and a half years now.

2             And I have three kids, so imagine.

3                     (HBC-McClune Exhibit 10 was marked.)

4     BY MR. BARTON:

5             Q.     I'm handing you what we've marked as  
6     Exhibit 10, which is a multi-page document.  First  
7     page is HBC\_MDL00127457, and our reference number  
8     is HBC 1249.

9             This appears to be a series of emails that  
10    start on August 27, 2015.  That's the first email  
11    chronologically that I see in this document at the  
12    bottom of the first page.  Do you see that?

13            A.     Bottom of the first page?

14            Q.     Um-hum.  I mean, that's where that email  
15    starts.

16            A.     Okay.  This email starts, okay.

17            Q.     Yeah.  I don't see an earlier one, I  
18    guess is what I'm saying.  That's where I --  
19    that's where I think I see this chain beginning.

20            A.     It's just attachments.  So just to  
21    confirm, these attachments are associated to this  
22    email from Erin; is that correct?

23            Q.     Well, let's go through it and see if we  
24    can figure that out.

25            A.     Okay.

1           Q.    That's really -- that's my  
2    interpretation, but I want to know what yours is  
3    since you're on the email, so...

4           So looking at this document, let's just kind  
5    of walk through it chronologically, and let me ask  
6    you kind of what you either remember or can tell  
7    us about this document.

8           So the email on August 27, 2015 at 5:22 p.m.  
9    was from you to the people named there in the To  
10   and the cc lines; correct?

11          A.    Yes.

12          Q.    From reviewing this now, as you have  
13   just for a few moments, do you recall sending this  
14   email and participating in this exchange?

15          A.    I do not recall this email specifically,  
16   but I do recall the events around this time.

17          Q.    And you don't dispute that the first  
18   email, the one on the bottom, on Thursday,  
19   August 27 at 5:22, was an email that was sent by  
20   you to those team members; correct?

21          A.    I do see my name there, yes.

22          Q.    The subject of your email was Vault  
23   Refrigeration; true?

24          A.    Yes. It is true.

25          Q.    You reference in your first paragraph



1 after saying, "Team," you say, "I realize that  
2 much of this may end up being overkill, but I want  
3 us to be 100 percent prepared for the inspection,  
4 and some of these items, if missed, could be  
5 costly mistakes."

6 Correct?

7 A. That is what that says, yes.

8 Q. So do you recall what inspection you're  
9 referring to in that statement?

10 A. Bear with me for a second. This email  
11 is quite lengthy. I'm going to review.

12 Q. That's fine.

13 A. I don't remember for certain.

14 Q. To be clear, you don't remember for  
15 certain what inspection was being referenced  
16 there?

17 A. Correct. Yeah. I do not recall which  
18 inspection.

19 Q. But do you appear to be referencing some  
20 anticipated inspection of the GERX, G-E-R-X,  
21 facility that was in process to be opened?

22 MR. KOBRIN: Object to form. Asked and  
23 answered.

24 THE WITNESS: Yes. That would appear to  
25 be correct.

1 BY MR. BARTON:

2 Q. The first bullet point that you address  
3 in your list of items is suspicious order  
4 monitoring.

5 Do you see that?

6 A. I do see that.

7 Q. And then it appears that you have  
8 several subpoints under that heading with a name  
9 attached to each one.

10 And you've got three things that it looks  
11 like you've attributed or listed with Joe Millward  
12 and one for you; correct?

13 A. That does appear to be correct.

14 Q. Are you really kind of trying to confirm  
15 or make assignments there, both to yourself and to  
16 Joe, to make sure certain things get done with  
17 respect to suspicious order monitoring there?

18 A. That appears to be what I'm doing here.

19 Q. And for you, specifically, you've  
20 reminded yourself in these notes to reach out to  
21 Thrifty White to see if they could share a little  
22 more about how they monitor; correct?

23 A. That is correct.

24 Q. Why do you think you were interested in  
25 that at that point in time?

1           A.     Referring back to; the subject, we were  
2     preparing to open a vault. We're nine days, eight  
3     days post our trip out to see Thrifty White. We  
4     were looking at building our SOPs and process for  
5     maintaining and managing a vault.

6           Q.     And did you have -- well, let me ask  
7     this: Did Joe kind of report to you within the  
8     context of this particular team?

9           A.     No. Not really, no.

10          Q.     It was maybe not a good way to ask the  
11     question. Did you have primary responsibility for  
12     the vault and refrigeration pieces of opening the  
13     GERX facility?

14          A.     Technically speaking, no.

15          Q.     Who did?

16          A.     It would have been the head of pharmacy  
17     at that point in time and the head of warehouse  
18     operations for Giant Eagle.

19          Q.     I understand. So ultimate  
20     responsibility were people above you in the  
21     organizational chart is what you're saying?

22          A.     Yes.

23          Q.     Within the context of this team, was  
24     there kind of a hierarchy of somebody who had  
25     primary responsibility?

1           A.    No definitive hierarchy.

2           Q.    Joe says -- or excuse me -- I think  
3   these are your words if I'm interpreting it right.

4           You have listed your first bullet for Joe  
5   Millward, "Work on figuring out what we have in  
6   place throughout our supply chain so we can better  
7   understand our gaps."

8           Do you see that?

9           A.    I do see that.

10          Q.    Do you have any recollection of what  
11   gaps you may have been concerned about having in  
12   your supply chain at that point in time with  
13   respect to suspicious order monitoring?

14               MR. KOBRIN:  Object to form.

15               THE WITNESS:  I have no recollection of  
16   gaps, but the business constantly changes, so an  
17   extra look was certainly in order here.

18               (HBC-McClune Exhibit 11 was marked.)

19   BY MR. BARTON:

20          Q.    I'm handing you Exhibit 11.

21               MR. KOBRIN:  This is a big document.  Do  
22   you want to take a break before?  Is it going to  
23   be a lot of questions or --

24               MR. BARTON:  It won't be that many, but  
25   we can certainly -- I don't know where we are on

1 time. I'm not looking at the clock. It's  
2 probably a good time. Okay. Let's go ahead and  
3 take a break.

4 I mean, I'm not trying to set him up, but I  
5 don't have that many questions about it. It's  
6 relatively self-explanatory how it relates to the  
7 last one, I think.

8 But, yeah, take a look. Take your time.

9 MR. KOBRIN: Do you want to take a break  
10 or do you want to keep on?

11 THE WITNESS: Why don't we take a break.

12 THE VIDEOGRAPHER: 2:53 p.m., we're  
13 going off the record.

14 (Recess from 2:53 p.m. to 3:19 p.m.)

15 THE VIDEOGRAPHER: We're now back on the  
16 record. The time is 3:19 p.m.

17 BY MR. BARTON:

18 Q. I hand you what we marked as Exhibit 11.  
19 It's kind of a big, thick document.

20 What it appears to be is an email from -- the  
21 top email in the chain, top of the first page, is  
22 that an email from you on Monday, August 31, 2015  
23 to some of the same people you've been emailing  
24 with in previous exhibits, Philip Raub, John  
25 Hutten, Joe Millward, Richard Shaheen, Walt Durr,

1 and then a few people copied on the cc line?

2 Correct?

3 A. Yes.

4 Q. And are you, in that email, forwarding  
5 to that group of recipients the attached Thrifty  
6 White policies for CII vault management, and  
7 you're telling them, "We can use these as a  
8 reference as we craft our own internal processes"?

9 A. That is what I'm saying.

10 Q. And the email below that is to you from  
11 Becky Wilson at Thrifty White earlier that same  
12 day. And she was attaching the copy of, she says,  
13 our policies and procedures" and other things and  
14 forms that they use and a training guide; correct?

15 A. I do see that.

16 Q. So there's also, on the second page, a  
17 couple of emails of thank yous, and kind of  
18 appears just sort of post visit to Thrifty White  
19 between you and a Justin Heiser; correct?

20 A. Yes.

21 Q. Starting on the fourth page of this  
22 document then really all of the rest of the  
23 exhibit are the attachments that are kind of  
24 described in the attachments line of your email to  
25 everyone on August 31; is that correct?

1           A.     That's what it appears to me. I have  
2 not flipped through every page, to be clear.

3           Q.     That's fine.

4           Fair to say that you felt there was value at  
5 that time, at the time you sent this email, you  
6 felt there was value in circulating -- both  
7 receiving and circulating to the team the Thrifty  
8 White policies for controlled substance CII  
9 management and vault management; correct?

10           MR. KOBRIN: Object to form.

11           THE WITNESS: Yes. Anything that helped  
12 us improve or get better were -- was of value, in  
13 my opinion.

14 BY MR. BARTON:

15           Q.     And at that point in time, in August of  
16 2015, August 31 of 2015, as we've -- as I think  
17 you've testified, Giant Eagle was preparing to  
18 start distributing CII, Schedule II, controlled  
19 substances for the first time in its GERX  
20 facility; correct?

21           A.     Yeah. That would be the case.

22           Q.     But it's also true, as of that point in  
23 time, that at least for almost a five-year period,  
24 from 2009 to 2014, that HBC, as a part of Giant  
25 Eagle, had distributed Schedule III controlled

1 substances from its HBC warehouse; correct?

2 A. Yes.

3 Q. Did you feel like the Thrifty White  
4 policies that you had received and presumably  
5 reviewed, did you feel like those would give your  
6 team a good starting point on comparable policies  
7 for controlled substance management and compliance  
8 for your GERX warehouse?

9 MR. KOBRIN: Object to form.

10 THE WITNESS: I thought it would give us  
11 another perspective. I don't know if there was  
12 anything my team would find value in, but it's  
13 better than no comparison.

14 BY MR. BARTON:

15 Q. And at least internally, did you feel  
16 like there wasn't a good comparison of internal  
17 documents already in existence at Giant Eagle?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: There was already internal  
20 documents, because we had been doing and have been  
21 doing and managing controlled substances  
22 transcending all these time periods.

23 (HBC-McClune Exhibit 12 was marked.)

24 BY MR. BARTON:

25 Q. I handed you what we've marked as



1 Exhibit 12. It's also another similarly thick  
2 document with an email on the top. And its  
3 beginning Bates number is HBC\_MDL00042149.

4 Do you see that?

5 A. I do see that.

6 Q. And is this an email from you to George  
7 Chunderlik, Joe Millward, Adam Zakin, cc'g Philip  
8 Raub, dated September 16, 2015, again forwarding  
9 the Thrifty White controlled substance policies?

10 A. Yeah. That is the case.

11 Q. And really, does it appear to be the  
12 same set of policies that you had previously  
13 forwarded to some of the same people but some  
14 different people also back a couple of weeks  
15 earlier on August 31?

16 A. Yeah. It appears to be the same set of  
17 documents, slightly different group on the to  
18 line.

19 Q. And do you recall, as you now look at  
20 this document, whether there was some different  
21 purpose in sending these policies to that slightly  
22 different group on the to line?

23 A. I don't recall specifically.

24 Q. In your email, you have a statement  
25 there after you tell the team you've attached the

1 policies and procedures documents you received  
2 from Thrifty White, you have a statement there  
3 that starts, "Pam Menerey..."

4 Do you see that?

5 A. Yeah. I do see that.

6 Q. You know, I don't see her on the email  
7 and I don't know who she is.

8 Who is Pam Menerey?

9 A. I believe she's one of the women at  
10 Thrifty White that gave us the tour.

11 Q. And it's possible her name shows up on  
12 an earlier email. I'm not trying to trick you. I  
13 didn't see it.

14 But that's what your recollection is: You  
15 may be just referencing her there because she, you  
16 think, may be connected to Thrifty White?

17 A. This email appears as if I'm sending  
18 this to the team, and I'm sending a comment or a  
19 series of comments from Pam and a comment from  
20 Justin Heiser to the team.

21 Q. As you read this now, do you believe  
22 that when you said, following Pam Menerey, "We  
23 developed it internally and established thresholds  
24 based on a rolling 30-day purchase history that is  
25 reported and reviewed daily," do you believe that

1 is a statement that you're reporting as having  
2 been said to you by Pam Menerey?

3 A. Yes.

4 Q. So you may be describing -- or, I should  
5 say, relating or relaying her description of kind  
6 of the Thrifty White process?

7 A. Yes. I'm not sure if it was I talked to  
8 them on the phone or some other method. But as I  
9 read this today, that's my interpretation.

10 Q. And Justin Heiser, he was from Thrifty  
11 White also; correct?

12 A. Correct. He's the SVP of operations for  
13 Thrifty at this time.

14 Q. And so you are relating to the team that  
15 he told you or you recall him telling you that --  
16 he was asking you, let him know if you see  
17 anything missing or if Giant Eagle gets any  
18 feedback from the DEA that they might find  
19 helpful; is that right?

20 A. Yes. That's how I read it.

21 Q. And then you finish by saying, "I would  
22 use these as a starting point."

23 Correct?

24 A. That is what I said.

25 Q. And by saying these, you're referring to

1 the attached policies and procedures you were  
2 forwarding to the team?

3 MR. KOBRIN: Object to form.

4 THE WITNESS: Yeah. But I think this is  
5 more of a starting point as they build processes  
6 for the new CII distribution, just to be clear.

7 BY MR. BARTON:

8 Q. And Thrifty White, having been  
9 distributing CIIs, you would agree at that point  
10 in time had a more robust set of policies and  
11 procedures for controlled substance compliance  
12 than Giant Eagle had?

13 MR. KOBRIN: Object to form. Misstates  
14 the evidence and the testimony.

15 THE WITNESS: Yeah. I can't agree or  
16 disagree with that. If you'd like to restate your  
17 question.

18 BY MR. BARTON:

19 Q. Well, I guess I'm just asking: In  
20 forwarding the Thrifty White policies and  
21 procedures to this group and recommending that  
22 they use them as a starting point -- which is what  
23 you did; correct?

24 A. Yes.

25 Q. In doing that, you were not directing

1     this team to a set of existing Giant Eagle  
2     controlled substance policies to use as a  
3     startling point; true?

4                 MR. KOBRIN:   Object to form.

5                 THE WITNESS:  I can't say what the  
6     starting point was.  It could be the starting  
7     point for one of the things they'd used for their  
8     process, one of the things they had augmenting its  
9     existing documentation.

10                At this point in time we weren't distributing  
11    CIIs.

12    BY MR. BARTON:

13                Q.    The group that you were forwarding this  
14    to, George Chunderlik, Joe Millward, and Adam  
15    Zakin, did they have responsibilities for  
16    controlled substance compliance for Giant Eagle  
17    and its new GERX family?

18                A.    I reported directly to Adam Zakin at  
19    this point in time.  Joe Millward, I'm not sure  
20    who he reported to, but he was senior manager of  
21    compliance, and George was manager of compliance.

22                So based on their title, and I don't know  
23    their full job description by heart, but they were  
24    responsible for compliance where these documents  
25    could be beneficial as they build out additional

1 policies and procedures.

2 Q. And it wasn't your responsibility at  
3 that point in time, ultimately, to put together  
4 whatever controlled substance policies Giant Eagle  
5 was going to have in place for GERX; correct?

6 A. That's correct.

7 (HBC-McClune Exhibit 13 was marked.)

8 BY MR. BARTON:

9 Q. I'm handing you Exhibit 13. This is a  
10 multi-page document, starts Bates  
11 No. HBC\_MDL00028251. And this appears to have as  
12 the top email on page 1 an email from you to  
13 George Chunderlik, cc'g Joseph Millward. And this  
14 is on October 8, 2015.

15 Do you see that?

16 A. Yeah. I do see that.

17 Q. And does this appear to be you  
18 forwarding to Joe Millward and George Chunderlik  
19 documents relating to suspicious order monitoring  
20 and regulatory compliance and related matters that  
21 you had received from Mallinckrodt?

22 A. Yeah. So Bonnie New was our rep with  
23 Mallinckrodt at that particular point in time, and  
24 she provided these documents.

25 Q. To you; correct?

1           A.    Yeah, to Giant Eagle. Because, in  
2   discussion, they knew we were in the process of  
3   opening up a controlled substance vault  
4   potentially, and Mallinckrodt has experience in  
5   that space.

6           Q.    So, again, you were being helpful. You  
7   were receiving documents that may be relevant to  
8   the compliance people especially and forwarding  
9   them on to compliance people; is that fair?

10          A.    I love to learn from other people.

11          Q.    But that's what you were doing there?

12          A.    Yes.

13          Q.    So it was really kind of, just in the  
14   same vein, as forwarding the Thrifty White  
15   documents; correct?

16                   (HBC-McClune Exhibit 14 was marked.)

17   BY MR. BARTON:

18          Q.    I handed you Exhibit 14. This is a  
19   five-page document, and the first page is Bates  
20   No. HBC\_MDL00056199, and reference No. 5030.

21                Does this appear to you to be an email from  
22   Joe Millward on Thursday, December 3, 2015 to you  
23   and a number of other people, both in the to line  
24   and the cc line?

25          A.    It does appear to be from Joe and it

1 does go to me.

2 Q. And Joe says, "Team, attached is the  
3 latest draft of the SOM procedures for the Giant  
4 Eagle order monitoring system policy."

5 Correct?

6 A. That is what Joe says.

7 Q. So does this reflect that as of  
8 December 3 of 2015, the process internally within  
9 Giant Eagle of, you know, trying to take all the  
10 information that had been gathered prior to this  
11 time, including things we've seen that you  
12 forwarded, and start putting together Giant  
13 Eagle's own order monitoring system and policy?

14 This just reflects part of that process, a  
15 step in that process?

16 MR. KOBRIN: Object to form. Assumes  
17 facts not in evidence.

18 THE WITNESS: Can you repeat the  
19 question.

20 BY MR. BARTON:

21 Q. Yeah. I'm just sort of asking for your  
22 interpretation of what's going on here. So I  
23 don't know the easiest way to ask that. So I'll  
24 ask it that way.

25 What's going on here?



1 MR. KOBRIN: If you know.

2 It's not an email from the deponent.

3 MR. BARTON: No, but it's an email to  
4 him.

5 MR. KOBRIN: It is.

6 THE WITNESS: It appears Joe was sending  
7 this for feedback as we were developing procedures  
8 for our new warehouse.

9 BY MR. BARTON:

10 Q. Right. And the procedures specifically  
11 that are being in development in this email are an  
12 order monitoring system policies and procedures;  
13 correct?

14 A. That is what it's called in this email.

15 Q. And you were a part of the team that Joe  
16 wanted feedback from on these order monitoring  
17 system policies and procedures; correct?

18 A. I would assume that's why he sent it to  
19 me.

20 Q. If you go to page -- gosh, it's the last  
21 page of the bullet points before the form, the  
22 investigation form right at the end.

23 The very last bullet point, there is -- and  
24 this is just a draft; correct?

25 A. Yes.

1 Q. His email says he's just sending a  
2 draft, this is looking for feedback; correct?

3 A. It appears very much so in draft form.

4 Q. Right. At this point, the draft that  
5 he's putting together contemplates that there  
6 would be an OMS review committee, and it would  
7 consist of the following team members that he's  
8 kind of identified by title; right?

9 A. That does appear what -- to be what this  
10 draft says.

11 Q. And a couple of bullet points above  
12 that, it just talks about the OMS review committee  
13 that's being contemplated there.

14 And it says, "The OMS review committee will  
15 evaluate the effectiveness of the OMS in  
16 identifying orders of unusual size, pattern, or  
17 frequency."

18 Correct?

19 A. That is what it says.

20 Q. And then it says, "The committee will  
21 make appropriate recommendations to improve the  
22 function and efficacy of the system."

23 Correct?

24 A. That is what the next sentence says.

25 Q. Did the OMS review committee, in more or

1 less the form that he is describing it there, come  
2 into existence sometime after this December 3,  
3 2015?

4 A. I don't recall specifically.

5 Q. Are you -- well, is your title listed in  
6 there? In those list of titles, would that be --  
7 as of December 3, 2015, would you have been a part  
8 of that committee had it been formed as described  
9 there?

10 A. Yeah. In the draft here, I would be the  
11 third bullet from the bottom, senior pharmacy  
12 category manager.

13 Q. Right. Okay.

14 A. Again, don't know what the final version  
15 of this document said.

16 Q. Right. And certainly not representing  
17 that it is the final, it's clearly a draft. But I  
18 just wondered if that kind of ended up turning  
19 into a committee as it was described in the draft  
20 form there.

21 Are you a member -- in your current position,  
22 are you a member of any committee that monitors or  
23 evaluates the order monitoring system of Giant  
24 Eagle on an ongoing basis?

25 A. Can you define committee?

1           Q.    Well, no.  A committee that Giant Eagle  
2   might call or describe itself as a committee.

3           Is there a committee formed, as such, and  
4   called a committee that reviews the order  
5   monitoring system?

6           A.    I can't say there is or is not, correct.  
7   There is groups of people that meet to improve  
8   things like this on an ongoing basis.  I don't  
9   know if it's called what's stated in this draft  
10  document.

11          Q.    Are you a part of such a group that  
12  meets on an ongoing basis to review things like  
13  that?

14          A.    I am called upon at times to take part  
15  in meetings where content like this is and could  
16  be discussed.

17                   (HBC-McClune Exhibit 15 was marked.)

18  BY MR. BARTON:

19          Q.    I'm handing you Exhibit 15.  Exhibit 15  
20  is a two-page document that appears to be an email  
21  from you to Joe Millward, Jessica Boyd, George  
22  Chunderlik, Adam Zakin, and Justin Daugherty; is  
23  that correct?

24          A.    Yes.

25          Q.    And this email is dated Monday,

1 September 28, 2015; true?

2 A. Yes. That is what it says.

3 Q. And the subject is Control Blocking  
4 Policy and Procedure. Do you recall sending this  
5 email?

6 A. I don't recall sending this email  
7 specifically.

8 Q. Do you recall drafting the email?

9 A. I don't recall putting this into Outlook  
10 specifically.

11 Q. Do you have any reason to question its  
12 genuineness as reflecting an email actually sent  
13 by you to those people as part of your job?

14 A. No. It looks like, contextually, things  
15 that we would have been working on at that time.

16 Q. And you say here, "Based on our call  
17 from Friday, here's how I see the current process  
18 working in the short term knowing that an overhaul  
19 is imminent considering the GERX distribution  
20 facility at FFM will be handling CIIs shortly."

21 Right?

22 A. Yes. That's what it says.

23 Q. And so what process are you really  
24 describing here? You said, "This is how I see the  
25 current process working."

1           What is the process that you're describing in  
2   this email?

3           MR. KOBRIN: Give him a chance to read  
4   through the whole thing.

5           MR. BARTON: Sure.

6           THE WITNESS: Yeah. If you give me one  
7   minute or you'd to comment on a specific bullet.

8   BY MR. BARTON:

9           Q. No. I'll let you read it. Go right  
10   ahead.

11          MR. KOBRIN: Read it for context.

12          THE WITNESS: Okay.

13   BY MR. BARTON:

14          Q. You've had a chance to read it?

15          A. Yes.

16          Q. So what process are you describing in  
17   this email to this team of people you're sending  
18   it to?

19          A. In bullet No. 1, "McKesson and Anda  
20   blocks the controlled substance order to the store  
21   based on their managed thresholds."

22          So when that occurs -- so Giant Eagle fills  
23   prescriptions for -- valid prescriptions for  
24   customers on an ongoing basis. Sometimes volume  
25   and demand goes up.

1           McKesson and Anda maintained thresholds  
2     internally, but they don't have full purview of  
3     Giant Eagle's purchases from all entities in our  
4     prescriptions to all customers.

5           So at times they would block an order for  
6     which we'd have to provide data and answers to a  
7     series of questions at times back to these  
8     distributors.

9           And what we're attempting to do is streamline  
10    that process so we can have faster turnaround on  
11    these and get it back to the distributors faster,  
12    getting, if approved, the prescriptions or the  
13    medications needed in order to fill customer  
14    prescriptions.

15          Q.    So you're describing a process that --  
16    how you see the current process working when  
17    McKesson or Anda blocks a controlled substance  
18    order from a store; correct?

19          A.    That is correct. I mean, some of this  
20    might be out of context. Some of this might be me  
21    trying to better understand this.

22          I know that at this time we had instances  
23    where stores were potentially cut off for a  
24    particular medication, and we had to go through a  
25    process of asking for additional product in order

1 to fill valid prescriptions.

2 Q. Right. Because if a store's orders are  
3 blocked for any product -- but controlled  
4 substances are what we're talking about here.

5 If a store's orders are blocked, that could  
6 create a problem for that store in being able to  
7 fulfill prescriptions and really orders from its  
8 customers for those medications; correct?

9 A. That's correct. And this would also  
10 apply to any medications on allocation, not just  
11 controlled substances.

12 Q. And so when you say you're trying to  
13 streamline the process, you are wanting the  
14 process of resolving a blocked order, one way or  
15 another, either in favor of the order being  
16 approved or rejected, you're wanting to make that  
17 process be as efficient and quick as possible for  
18 the store's benefit; is that true?

19 A. Yeah. Certainly an opportunity to  
20 streamline and improve was in order at that point  
21 in time.

22 Q. But you were constrained by what  
23 McKesson or Anda would require in terms of  
24 resolving an order that they had blocked.

25 They had certain requirements that they were



1 expecting of Giant Eagle in order to evaluate and  
2 resolve one of those blocked orders; correct?

3 A. They would, and they would vary over  
4 time based on the situation.

5 Q. So this email to the team is just trying  
6 to help this team of people understand your  
7 understanding of how Giant Eagle is addressing  
8 those blocked order situations from Anda and  
9 McKesson and to do so as efficiently as possible.

10 A. That's correct.

11 Q. McKesson and Anda blocking an order, you  
12 indicate in this email that this starts -- the  
13 process you're discussing starts with McKesson or  
14 Anda blocking a controlled substances order --  
15 substance order to the store based on their  
16 managed thresholds.

17 I understand you're referring there to  
18 McKesson or Anda managed thresholds; is that  
19 right?

20 A. That's correct.

21 Q. So they have their own threshold system  
22 they were applying to orders made to their  
23 warehouses for controlled substances?

24 A. That's correct.

25 Q. And did they have a system in which if

1 thresholds -- however they determined their  
2 thresholds, that was up to them; right?

3 A. Yeah. We had no say in how they set  
4 their thresholds.

5 Q. So did they have a system in which if an  
6 order from a store for a controlled substance  
7 exceeded their threshold, that an order might be  
8 just automatically blocked by their system?

9 MR. KOBRIN: Object to form.

10 THE WITNESS: That is what would happen,  
11 yes.

12 BY MR. BARTON:

13 Q. And, therefore, that created this  
14 process you're describing, which is, what can we  
15 do when that happens to, you know, efficiently and  
16 correctly address the blocked order?

17 A. That's correct.

18 Q. Did your system at HBC during the time  
19 that HBC was distributing Schedule III controlled  
20 substances, did your system automatically block  
21 orders when a given store's order might exceed the  
22 thresholds that your system had put in place?

23 MR. KOBRIN: Object to form. You're  
24 assuming that he understands exactly how the  
25 McKesson -- I mean, he sees when it gets blocked.

1 But is there an assumption here that he  
2 understands how the blocking system works at  
3 McKesson?

4 MR. BARTON: No. My question is about  
5 the HBC system.

6 MR. KOBRIN: Well, you just asked him to  
7 compare it. I mean, when you say blocked, you  
8 mean as in how you're referring to what you  
9 believe the McKesson system does; correct?

10 MR. BARTON: I just asked him some  
11 questions about this response to the McKesson  
12 system based on his understanding.

13 I don't need him to testify about the details  
14 of how McKesson blocks. I'm asking him --

15 MR. KOBRIN: I don't know if he knows  
16 any of those details.

17 MR. BARTON: I'm not asking him.

18 MR. KOBRIN: Well, you said automatic.  
19 That's the only concern I have as to whether  
20 he's internalizing. I just want to make sure the  
21 record is clear.

22 Maybe you can clarify whether he knows  
23 whether the McKesson system automatically does  
24 anything.

25 MR. BARTON: Well, let me just ask the

1 question and see what happens.

2 BY MR. BARTON:

3 Q. To your knowledge, did HBC's system for  
4 comparing orders to threshold levels that you've  
5 testified about, and we've talked about earlier  
6 today, did HBC's system have as a function of that  
7 system a blocking of an order that was identified  
8 as above the threshold?

9 Did that happen, you know, automatically?

10 MR. KOBRIN: Object to form.

11 THE WITNESS: Just because an order was  
12 above a threshold didn't mean the order was  
13 necessarily suspicious or diverted in any way. So  
14 there was --

15 BY MR. BARTON:

16 Q. Right. Understanding that --

17 MR. KOBRIN: Can you let him finish.

18 THE WITNESS: There was a process to  
19 block what would be deemed as orders of interest  
20 from going and being distributed to the stores  
21 until they were reviewed thoroughly.

22 I'm not a hundred percent familiar on the  
23 technical aspects of how that worked, but there  
24 was a process in place to do that.

25

1 BY MR. BARTON:

2 Q. Okay. So whatever process then that  
3 you're not apparently familiar with the technical  
4 aspects of, but whatever process was in place as  
5 you understand it at HBC to -- that would result  
6 in the blocking of an order by a store for  
7 controlled substances, that process was not  
8 something that you coded into the daily threshold  
9 report monitoring system.

10 A. No. There's a lot of programming that  
11 goes into a lot of different aspects. It's -- you  
12 know, we've talked about it being Excel workbook.  
13 It's way more than that, and it has to interact  
14 and integrate with a lot of different systems  
15 within Giant Eagle.

16 So I'm not responsible for any application  
17 integration with other warehouse management  
18 systems.

19 Q. To your knowledge, was there an  
20 automated -- computer-coded, automated generated  
21 blocking of an order based on the exceeding of a  
22 threshold? Or did it require some manual review,  
23 investigation before an order would be blocked?

24 MR. KOBRIN: Object to form.

25

1 BY MR. BARTON:

2 Q. If you know.

3 A. Yeah. I don't know how it worked  
4 because I wasn't responsible for that team. But  
5 we're a captive distributor and we're sending it  
6 to our store. So, technically, it's still in  
7 inventory, and we're just transferring product.

8 So is it a requirement to block?

9 Q. Well, you're transferring product from a  
10 distributor to a retailer; correct?

11 That's what HBC was doing. Agreed?

12 A. A captive distributor, yes. We're  
13 distributing to ourselves.

14 Q. Right. But once it's in the hands of  
15 the retailer, then that product is no longer in  
16 the hands of the distributor, HBC; correct?

17 MR. KOBRIN: Object to form. It  
18 misrepresents the defendants' relationships.

19 BY MR. BARTON:

20 Q. Well, I understand that HBC is Giant  
21 Eagle. Right. I mean, it is captive. They're  
22 separated; true?

23 A. Yeah. It's one company, yes.

24 Q. But once the product is in the retail  
25 hands, I guess my question is: What's blocking it

1 from being sold to a patient if there isn't some  
2 block of the actual order from HBC?

3 A. We have controls throughout our whole  
4 network that would include controls at retail  
5 where we're reviewing and looking at prescriptions  
6 that would not allow that prescription -- that  
7 medication to get into a patient's hand if it was  
8 suspected to be an order of interest in any way,  
9 shape or form.

10 Q. So your understanding is that if an  
11 order exceeded the threshold under the threshold  
12 reporting system that you helped create at Giant  
13 Eagle, that until there was some resolution of why  
14 that threshold had been exceeded by that order,  
15 the product associated with that order, those  
16 products would not leave the pharmacy and get into  
17 the hands of the prescribing -- of the public?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: Having a threshold  
20 management system isn't a DEA requirement.

21 BY MR. BARTON:

22 Q. You're not answering my question,  
23 though. I'm just asking about how your system  
24 worked. I'm not asking about what DEA required on  
25 that.

1           Did your system work in such a way that if on  
2   a daily threshold report there was an order that  
3   exceeded the threshold, that the product, if  
4   shipped and transferred anyway to the ordering  
5   pharmacy, would not leave the pharmacy until that  
6   threshold issue had been investigated and  
7   resolved?

8           MR. KOBRIN: Object to form.

9           THE WITNESS: There was exhaustive due  
10   diligence at wholesale and retail.

11          I'm not in charge of compliance so I'm not at  
12   liberty to say when and how that was executed.  
13   I'm also not in charge of operations.

14   BY MR. BARTON:

15          Q.    So you don't know is the answer to the  
16   question.

17          A.    I think that's a true statement.

18                (HBC-McClune Exhibit 16 was marked.)

19   BY MR. BARTON:

20          Q.    I've handed you Exhibit 16. This is a  
21   document with the first page Bates  
22   No. HBC\_MDL00046220.

23          Exhibit 16 jumps ahead on the timeline to  
24   November of 2016. So I just want to point that  
25   out. I'm not connecting it really to the things



1 that we were just looking at in time or anything.

2 But I wanted to ask you about this.

3 This is a document that appears to be an  
4 email from Philip Raub on November 21, 2016 to the  
5 recipients named there, including Adam Zakin and  
6 George Chunderlik, and several others, that  
7 identifies an attachment described as Project  
8 Scope Drug Control Program 11/21/2016.

9 Do you see that?

10 MR. KOBRIN: Before he testifies, can I  
11 have a standing objection?

12 We don't see this is relevant because this,  
13 on its face and by the date on it, relates to  
14 GERX, which is not a party to this case.

15 MR. BARTON: That's fine. You can have  
16 a standing objection to that.

17 BY MR. BARTON:

18 Q. Do you agree, I've kind of described the  
19 email correctly as far as what it appears to be?

20 A. It appears to be from Phil Raub, as you  
21 mentioned, to a series of people with an  
22 attachment for project scope.

23 Q. The scope document that is attached --

24 A. I'm also not on this email.

25 Q. Correct. Correct. You're not on the

1 email. Your name is in the project scope  
2 document, which is -- I just wanted to help you  
3 understand the context of where this document is  
4 coming from at this point in time.

5 A. Okay.

6 Q. The document that was circulated among  
7 those people, not you, is the document that is  
8 attached.

9 And my question is: Does this document look  
10 familiar to you?

11 And I'm not suggesting this is a final  
12 document. It doesn't appear to be. But does that  
13 document look familiar to you?

14 A. I've seen a significant amount of  
15 project scope documents. So, generally speaking,  
16 it looks familiar.

17 Q. On the -- it's page 3 of 8 of the  
18 project scope document, there's an identification  
19 of stakeholders. And that's where your name  
20 appears as the Section 1.2 project  
21 decision-makers. Do you see that?

22 A. I do see my name.

23 Q. Is this a project that you participated  
24 in as a decision-maker with these other people  
25 identified?

1           A.    This is a project that I participated in  
2   some capacity. This is an IT document, I'd like  
3   to kind of point out as we continue to go through  
4   this. So...

5           Q.    And what do you mean by that? Prepared  
6   by IT?

7           A.    It's prepared and managed by IT. IT is  
8   in charge of project management. And so project  
9   manager on this one is Jill Jenson.

10          Q.    And, in fact, the revision history on  
11   the second page of this document has a couple of  
12   dates and the contributor, Phil Raub, with an  
13   initial draft and an update.

14          Do you see that?

15          A.    I do see that.

16          Q.    So does that mean that Phil Raub was  
17   likely the -- was he the primary drafter of this  
18   document?

19          A.    He's the business analyst, and signed  
20   this page, assigned to this project. So he would  
21   be in support of Jill Jenson and the rest of the  
22   team on the project.

23          Q.    Do you know who the drafter was of this  
24   document?

25          A.    I don't know who constructed every line

1 on this. These are prepared by IT, though.

2 Q. And what was your understanding of the  
3 purpose of this document?

4 MR. KOBRIN: Do you have an  
5 understanding of the purpose of the document?

6 We haven't established that he saw the  
7 document. So object to form.

8 MR. BARTON: That's fine.

9 BY MR. BARTON:

10 Q. Do you have an understanding of what the  
11 purpose of this document was?

12 A. I have a general understanding of what  
13 we were trying to do with this document.

14 Q. What is that understanding?

15 A. Continued improvement of our controlled  
16 substance management process.

17 Q. Do you know whether the project  
18 described in this document -- and this is just a  
19 scope document, as I understand it. But do you  
20 know whether the project described here was  
21 completed?

22 A. As it's described here, I can't say for  
23 certain that all aspects of this drafted scope  
24 document were completed.

25 Q. Is there currently a project called a

1 drug control program at Giant Eagle that is still  
2 ongoing that you are a part of?

3 MR. KOBRIN: Object to form. Ongoing,  
4 you mean the project is ongoing?

5 MR. BARTON: Yeah, the project.

6 BY MR. BARTON:

7 Q. Is there a drug control program project  
8 still in process or ongoing at Giant Eagle that  
9 you are involved with?

10 A. Project --

11 MR. KOBRIN: Object to form.

12 Do you mean in contrast to it having been  
13 applied, still being worked on, when you say  
14 ongoing? Or is your prior question related to  
15 whether he knew it was completed?

16 So I think there's some confusion in that.

17 MR. BARTON: I don't mean to be unclear  
18 on that. I appreciate it. That's fair.

19 BY MR. BARTON:

20 Q. I think you said you weren't sure  
21 whether this project, as described in this scope,  
22 was completed, as described in this scope.

23 Is that accurate?

24 A. That's an accurate statement.

25 Q. So understanding that, I guess I was

1     trying to ask whether you know whether at some  
2     point this project was modified in any way that  
3     you can tell me about, that you can see from  
4     looking at this scope as described.

5           A.     We continued -- I mean, this is  
6     November 21 of 2016. Since that date and time  
7     we've continued to enhance and improve our drug  
8     control program in all aspects. So, yes, it has  
9     been.

10           Is it a formalized project as seen in this  
11     scope document? There's probably several of them  
12     that are similar to this, but I'm not familiar  
13     with every document that IT creates.

14           Q.     That's understood.

15           If you can go back to Exhibit 14 real quick,  
16     I had asked you some questions about this document  
17     and the draft order monitoring policy that Joe  
18     Millward had circulated.

19           And I wanted to ask you about the attachment  
20     to the policy in Joe's email on the last page.

21           Do you see that?

22           A.     On the last page?

23           Q.     The last page of the document, if you  
24     turn to that.

25           A.     Yes. I see it.

1 Q. It's got a heading Order Monitor System  
2 (OMS) Investigation Form; correct?

3 A. That is what the heading says.

4 Q. Does that form look familiar to you?

5 A. No, not really.

6 Q. Do you know if that form is currently in  
7 use as such at Giant Eagle?

8 A. I don't.

9 Q. And if it were, it probably wouldn't be  
10 a form that you would be interacting with or using  
11 on a regular basis; correct?

12 A. Yeah. I'm not responsible for the  
13 warehouse or operations or compliance, so no.

14 Q. You had described, when we were looking  
15 at Exhibit 15, about the McKesson and Anda  
16 blocking orders and the process you were  
17 describing that Giant Eagle would go through when  
18 that happened.

19 This form here, does it appear to you to be  
20 an investigation form that might be used as part  
21 of an order monitoring system that had flagged an  
22 order as, you know, over a threshold, and then  
23 just a form used to document the investigation of  
24 why that flag had occurred?

25 MR. KOBRIN: Object to form.

1 Speculative. He's not familiar with the document.

2 THE WITNESS: Yeah. I mean it's a draft  
3 form. I'm not familiar with the form. It never  
4 went -- I don't know if this ever became final, so  
5 I don't know. I can't answer.

6 BY MR. BARTON:

7 Q. I don't either, right, and I wouldn't  
8 want you to speculate on that.

9 But do you know of any forms like this that  
10 were in existence prior to the creation of this  
11 form, which has a created date of 12/2/2015?

12 A. Yeah. I'm not positive one way or the  
13 other.

14 Q. You had not created any form like this  
15 anywhere along the line when you were involved in  
16 any respect with the order monitoring system?

17 A. No. I mean, I think the form that I  
18 worked on creation was referred in your other  
19 example.

20 Q. Are you pointing to Exhibit 15?

21 A. Yes.

22 Q. Yeah. And I think you had referred --  
23 there was a form that was created or used to help  
24 resolve McKesson or Anda blocking of orders;  
25 correct?



1           A.     Right. And there was forms that  
2     compliance had. I was not super familiar with  
3     those. Again, in December of 2015, I guess I was  
4     in procurement then. That's probably when I  
5     started seeing those forms.

6           So, I mean, up until August of 2015, I wasn't  
7     even in a role that would have anything to do with  
8     this aspect of the business directly or indirectly  
9     for that matter.

10          Q.     Fair enough.

11                 MR. BARTON: I'm going to pass the  
12     witness to my colleague here, Ms. Wicklund, if  
13     you're ready.

14                 Do we need to take a short break?

15                 MS. WICKLUND: Can we take a short  
16     break?

17                 MR. KOBRIN: Sure.

18                 THE VIDEOGRAPHER: We're going off the  
19     record. The time is 4:14 p.m.

20                 (Recess from 4:14 p.m. to 4:28 p.m.)

21                 THE VIDEOGRAPHER: We're now going back  
22     on the record. The time is 4:28 p.m.

23                                 EXAMINATION

24     BY MS. WICKLUND:

25                 Q.     Mr. McClune, I'm Britt Wicklund. We met

1 earlier. I just wanted to ask you a few  
2 questions.

3 MS. WICKLUND: I am going to mark this  
4 as Exhibit 17.

5 (HBC-McClune Exhibit 17 was marked.)

6 BY MS. WICKLUND:

7 Q. I'll pass that to you. And  
8 Exhibit 250 -- I'm sorry -- Exhibit 17 that I've  
9 just marked is our internal reference of number  
10 HBC-150. It is an email that is Bates numbered  
11 HBC\_MDL00035614.

12 This appears to be an email forwarded to you  
13 from Greg Carlson on October 8, 2015?

14 A. That appears to be accurate.

15 Q. And this email has some attachments. It  
16 appears that he's forwarding an email to you that  
17 had an original date of July 28, 2014.

18 A. I saw that.

19 Q. And the attachments are what appears to  
20 be contracts for Supplylogix services. Would you  
21 agree?

22 A. That appears -- at first glance, it  
23 appears to be an unexecuted contract or an  
24 amendment to a service agreement for Supplylogix,  
25 yes.

1 Q. Correct. So the first few pages, the  
2 Bates numbers ending in 615 through 617 is the  
3 unexecuted amendment to the Supplylogix contract,  
4 and then after it appears to be the original  
5 Supplylogix contract.

6 A. I do see that. And the second -- the  
7 service agreement does appear to be executed.

8 Q. Good. Can you tell me a little bit  
9 about what Supplylogix is?

10 A. Supplylogix is a McKesson-owned  
11 subsidiary that assists retailers with inventory,  
12 many aspects of inventory management.

13 Q. And what are those aspects?

14 A. They have a series of modules including  
15 Pinpoint Launch, which is when a branded product  
16 comes to market, you can use your generic -- your  
17 branded volume to drive generic volume and  
18 decrease your branded onhand lowering your shrink  
19 risk from an inventory perspective.

20 Pinpoint Order, which is an order point  
21 management system that does interface in our  
22 system with PDX, which is our prescription or  
23 prescribing platform for order point management.  
24 So it looks at your history. It says, hey, you  
25 probably need three bottles on the shelf in order

1 to satisfy patient demand, sets the order point in  
2 the system, doesn't allow onhands to go below that  
3 three-bottle threshold, will prompt or commit  
4 orders to our wholesale distributors when it drops  
5 below that so the store doesn't have to worry  
6 about managing inventory manually and orders.

7 Pinpoint Transfer, which identifies dead  
8 overstock products that you can transfer from  
9 store to store. There's another segment of that  
10 Pinpoint Transfer. It's more of a return to  
11 vendor module. So it looks at -- it does  
12 interface well with McKesson and basically  
13 identifies items that are dead overstock that  
14 don't need to be transferred, but they could go  
15 back to the wholesaler for return, so opening up  
16 more capital.

17 There's also Pinpoint Audit and Pinpoint  
18 Monitor. I get those a little confused in my  
19 head, so I'm not sure which one is which and what  
20 they do, but they are more built around inventory  
21 levels, thresh -- or not threshold management --  
22 identification of risk levels, doctors, patients,  
23 et cetera, at retail that could be an issue from a  
24 controlled substance perspective.

25 Q. So these are primarily store-facing

1 software applications?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: The application interface  
4 is available anywhere you have a valid log-in, but  
5 most of the analytics built into their platform  
6 would be store centric. But you could leverage  
7 chain or whole chain depending on which module or  
8 aspect you're using.

9 BY MS. WICKLUND:

10 Q. And the contract in Exhibit 17, this is  
11 for -- the original contract appears is for  
12 Pinpoint Audit service and then managed EDI  
13 services. Can you explain to me what the managed  
14 EDI services is?

15 MR. KOBRIN: Where are you seeing this?

16 MS. WICKLUND: I'm sorry. It's Bates  
17 number ending in 622.

18 MR. KOBRIN: Exhibit A?

19 MS. WICKLUND: Yes.

20 THE WITNESS: I'm not an expert when it  
21 comes to EDI, so I'd only be speculating to tell  
22 you what the answer to that is.

23 MR. KOBRIN: Don't speculate.

24 BY MS. WICKLUND:

25 Q. Then Pinpoint Audit services here, as I

1 understand, this is what you described earlier  
2 with tracking store inventory and loss. Is that a  
3 reasonable --

4 A. Again, my expertise is minimal when it  
5 comes to all these -- all of what these  
6 applications or modules do. I understand them  
7 from a management perspective, not the  
8 particulars.

9 So this would be one of the modules that  
10 would help Giant Eagle keep our stores or allow  
11 our stores view into potential risk from a  
12 controlled substance perspective.

13 Q. And potential store losses is just one  
14 aspect of diversion risks; is that a fair thing to  
15 say?

16 MR. KOBRIN: Are you reading the  
17 potential store losses? Where is that in the  
18 document?

19 MS. WICKLUND: I'm so sorry.

20 BY MS. WICKLUND:

21 Q. It's point B in Pinpoint Audit where  
22 it's talking about Supplylogix monitors.  
23 "Supplylogix will provide a web-based interface  
24 for a customer to view stores and items in  
25 inventory that may have a history of loss based

1 upon Supplylogix's proprietary evaluation of  
2 customers' transactional data. This transactional  
3 data includes any EDI 810 or invoice data made  
4 available to Supplylogix by customer and/or  
5 customer suppliers listed in Exhibit B. Results  
6 of the proprietary evaluation may not result in  
7 100 percent accuracy with respect to identifying  
8 potential losses, and customers should conduct  
9 their own research with respect to potential  
10 losses."

11 A. I mean, that is one of the things that  
12 the audit function would do, yes.

13 Q. And it also says that "The store and  
14 activity dashboard screens are available by NDC  
15 and GPI. Additionally, there's a detailed  
16 transaction report sorted in chronological order  
17 available to export."

18 Do you know if Giant Eagle regularly exported  
19 these reports from Supplylogix?

20 MR. KOBRIN: Object to form.  
21 Foundation.

22 THE WITNESS: I know that there was  
23 continual interaction with the Supplylogix  
24 interface. To what capacity and what activities  
25 the analysts were doing, I'm not a hundred percent

1     sure.

2     BY MS. WICKLUND:

3           Q.     And then I'll move to -- there's the  
4     first part of this, the amendment to this  
5     contract. That's Bates number ending 615. And  
6     this --

7           A.     Do you know, I mean, based on your  
8     findings whether this was executed or not?

9           Q.     Yes. I guess I could go ahead --

10          A.     Is it your next one? Sorry. It's up to  
11     you. I was trying to get a date on the execution  
12     for context.

13                     (HBC-McClure Exhibit 18 was marked.)

14     BY MS. WICKLUND:

15          Q.     This is Exhibit 18. Exhibit 18, and I  
16     will represent to you that this was in with the  
17     documents that were produced to us as your  
18     custodial file. This appears to be the same  
19     amendment to this contract.

20          Looking at the last page, it appears that it  
21     was executed -- signed by Mark Wilgus. Is it  
22     Wilgus?

23          A.     Yeah. I'm not sure of the Supplylogix.

24          Q.     I'm sorry. By Joseph Lucot, dated  
25     September 30, 2014.



1           A.     I agree with that.

2           Q.     So this contract amendment in Exhibit 17  
3     and 18, I guess the second page of Exhibit 18 adds  
4     something called Pinpoint Monitor services which  
5     is number six under F.

6           A.     Okay.

7           Q.     So can you tell me about the Pinpoint  
8     Monitor services?

9           A.     From a general perspective, again, it's  
10    a tool that identifies dispensing of controlled  
11    substances against ourselves and peers on a  
12    rolling basis that we can use and analyze as a  
13    secondary avenue for researching any risks that  
14    the organization may have from a controlled  
15    substance perspective.

16          Q.     From Giant Eagle's perspective, would  
17    you say that the Pinpoint Monitor services  
18    described in Exhibit 18 are -- would that be a  
19    suspicious order monitoring program or part of a  
20    program?

21                   MR. KOBRIN:   Object to form.

22                   THE WITNESS:   Again, it's part of the  
23    bigger program that Giant Eagle would use.   This  
24    is another tool we would have at our disposal to  
25    execute against that program.

1 BY MS. WICKLUND:

2 Q. And do you know if the Pinpoint Monitor  
3 services generated any type of report to Giant  
4 Eagle?

5 A. I know that the tool was used ongoing by  
6 the compliance team through the years. But to  
7 what information, what reports came out of it and  
8 what action was taken, I'm not familiar.

9 Q. That's fair. And HBC distributed HCPs,  
10 which are hydrocodone combination products. Am I  
11 correct in saying that HBC distributed HCPs  
12 between November 2009 and October 2014 when they  
13 were rescheduled as Schedule II?

14 A. Based on the best of my knowledge, yes,  
15 we distributed those drugs as they were Schedule  
16 IIIs. When they became Schedule IIs, we no longer  
17 were licensed to distribute those.

18 Q. So with that in mind, would it be a fair  
19 assumption then to say that by the time that this  
20 contract was executed, the Pinpoint Monitor  
21 services were probably not in full operation with  
22 Giant Eagle?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: The Pinpoint Monitor tool  
25 was to review retail compliance as part of our

1 suspicious order monitoring, our whole compliance  
2 program.

3 BY MS. WICKLUND:

4 Q. Correct.

5 A. So it doesn't matter what the  
6 distributor was for that particular product. It  
7 was looking at your retail dispensing to find out  
8 if there was any abnormalities and flag those  
9 accordingly.

10 Q. But this service was not in operation by  
11 HBC or Giant Eagle during the time that HBC was  
12 distributing HCPs?

13 A. I don't recall the last date we  
14 distributed, but since the execution of this was  
15 9/30/13, it would be close to the end of our  
16 distribution of HCPs out of HBC.

17 Q. I think I'm done.

18 THE VIDEOGRAPHER: Going off the record.  
19 The time is 4:45 p.m.

20 (Recess from 4:54 p.m. to 4:54 p.m.)

21 THE VIDEOGRAPHER: We're now back on the  
22 record 4:55 p.m.

23 EXAMINATION

24 BY MR. KOBRIN:

25 Q. Mr. McClune, earlier today opposing

1 counsel showed you a lot of emails from the 2015  
2 period. Do you recall that?

3 A. Yes. I do recall reviewing a series of  
4 emails.

5 Q. A lot of those emails had to do with  
6 suspicious order monitoring, both programs by  
7 Giant Eagle and programs by other entities like  
8 Thrifty White. Do you recall that?

9 A. I do remember being requested to review  
10 those older emails.

11 Q. When opposing counsel was asking you  
12 about those emails from 2015, you mentioned  
13 controls at the pharmacy when he was asking you  
14 about distribution controls.

15 Why did you bring up controls at the pharmacy  
16 in relation to those 2015 emails?

17 A. The pharmacies is one of our main  
18 locations for our controlled substance monitoring  
19 program. It's integral to it. In addition, in  
20 2015 we weren't distributing hydrocodone  
21 combination products out of our HBC warehouse and  
22 stores.

23 Q. So those products would not have even  
24 been in the distribution pipeline for HBC?

25 A. Yeah. They would not have been.

1 Q. Could you turn to -- do you have your  
2 exhibits?

3 A. I have them all here.

4 Q. Look at Exhibit 3. Could you turn to  
5 the page 10 in the presentation. It's also .10 at  
6 the top of the page. It has the title Role of  
7 Pharmacy Within Giant Eagle.

8 A. Okay.

9 Q. Do you recall looking at this page  
10 earlier today when you were answering questions  
11 from opposing counsel?

12 A. I do.

13 Q. Do you recall that you talked about the  
14 numbers in the box under the pharmacy column? You  
15 talked about the sales number and the margin  
16 numbers. Do you remember that?

17 A. Yes. I do recall talking about the  
18 pharmacy number and then the other number being  
19 the [REDACTED] being supermarket and Market  
20 District.

21 Q. Right. What do those numbers in the  
22 Pharmacy column, what do those numbers represent?

23 A. In the Pharmacy column?

24 Q. Yes.

25 A. Just to be clear, in the Pharmacy column

1 it's all pharmaceutical sales, whether it's MDI  
2 inhalers or anything, you know, any pharmaceutical  
3 product.

4 Q. Would that number include sales of  
5 cholesterol medications?

6 A. Yes, it would.

7 Q. Would it include sales of vitamins?

8 A. Yes, it would.

9 Q. Would it include sales of even diabetes  
10 testing supplies or other equipment?

11 A. Basically anything you would need a  
12 prescription for or you couldn't or wouldn't want  
13 to sell on the shelf.

14 Q. Approximately what percentage of those  
15 numbers would be made up by the sale of controlled  
16 substances, if you know?

17 A. I don't know an exact number, but it's  
18 very small in contrast to total pharmacy sales.

19 Q. What percentage of that amount of  
20 controlled substances sales would be hydrocodone  
21 combination products?

22 A. An even smaller amount of that. So a  
23 percent or two at most.

24 Q. And what percentage of that number or of  
25 that subset, that small percent, would be

1 hydrocodone combination products that were sold  
2 into Summit County and Cuyahoga County, Ohio?

3 A. A really, really -- an even smaller  
4 amount. I don't have a number off the top of my  
5 head, but small.

6 Q. Thank you, Mr. McClune.

7 MR. BARTON: Just a couple of follow-ups  
8 on that.

9 RE-EXAMINATION

10 BY MR. BARTON:

11 Q. Just on those last questions about sales  
12 volumes of hydrocodone-containing products by  
13 Giant Eagle, and I understand you were just kind  
14 of trying to give some general estimates or  
15 perspectives based on your general familiarity  
16 with the data during the time that you were at  
17 Giant Eagle. Correct?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: Can you repeat that.

20 BY MR. BARTON:

21 Q. Yeah. You just said -- for example, you  
22 estimated maybe a percent or two of the sales.  
23 I'm not even sure what the percent or two was in  
24 relation to, was it in relation to the total  
25 number of sales or just the total number of the

1 sales of pharmaceuticals.

2 But you were just estimating kind of what you  
3 believe the percentage of sales to be in Giant  
4 Eagle of hydrocodone-containing products; correct?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: This is my business. I'm  
7 in charge of finance for pharmacy, so I'm very  
8 familiar with the amounts. It is a very small  
9 amount of the total sales for pharmacy.

10 BY MR. BARTON:

11 Q. Right. So my question is: You have  
12 data that can answer those questions exactly;  
13 correct?

14 A. Giant Eagle would have dispensing data  
15 for that.

16 Q. You have data, Giant Eagle has data that  
17 can tell us exactly how many  
18 hydrocodone-containing products were sold into  
19 Cuyahoga and Summit counties during any time  
20 period that we might choose; correct?

21 A. I suppose we would, yes.

22 Q. And wouldn't Giant Eagle even have data  
23 that would -- that could tell us exactly how many  
24 hydrocodone-containing products were sold under a  
25 specific doctor's prescription?



1 MR. KOBRIN: Object to form.

2 THE WITNESS: Giant Eagle has that  
3 information, but it's a patient record, so it  
4 would be protected.

5 BY MR. BARTON:

6 Q. Understood that patient records are  
7 protected. I'm just asking if Giant Eagle  
8 actually has that data.

9 MR. KOBRIN: Actually beyond the scope  
10 of direct. How is that related to the scope of  
11 direct?

12 MR. BARTON: You asked him questions to  
13 sort of give us some general estimates about  
14 percentages of hydrocodone products. Now I'm just  
15 exploring, wait a minute, we don't have to rely on  
16 estimates. I'm just asking exactly what data do  
17 you have and how specific is it.

18 MR. KOBRIN: That has nothing to do with  
19 sales data. It's beyond the scope of our  
20 redirect. And, furthermore, it's beyond the scope  
21 of the court's order in this case, in discovery  
22 order 8, which said that prescription data was  
23 beyond the scope of discovery in this case.

24 MR. BARTON: I disagree. I'm just  
25 asking him -- you asked him what kind of

1 percentages he believes there are of hydrocodone  
2 products going into Summit and Cuyahoga County. I  
3 am simply j asking him exactly what kind of data  
4 the company has.

5 MR. KOBRIN: Yeah. You gone to that. I  
6 just don't understand why the prescription data  
7 has anything to do with that.

8 MR. BARTON: It's just related to the  
9 type of data we're talking about.

10 BY MR. BARTON:

11 Q. Let me just ask. The sales data that  
12 Giant Eagle collects from its pharmacies includes,  
13 one, the drugs that are sold, correct,  
14 hydrocodone? That's why you know. That's why you  
15 know as a finance guy and a data guy that with a  
16 sufficiently -- a sufficient amount of confidence  
17 to testify to it under oath, you can say, eh, one  
18 to two percent of the drugs we sold were  
19 hydrocodone-containing products, right, because  
20 you collect data of how many of those drugs are  
21 hydrocodone-containing products; correct?

22 MR. KOBRIN: Object to form.

23 THE WITNESS: The data is created at the  
24 time of adjudication. I don't know what our  
25 retention policy on that, off the top of my head.

1     So there is data and was data. I don't know how  
2     much of it still exists.

3     BY MR. BARTON:

4             Q.     Let's just flesh out what that data is  
5     that you're collecting at the time regardless of  
6     what the retention policy.

7             The data that would be collected, it would be  
8     the same data from which you would form an opinion  
9     about relative percentages of  
10    hydrocodone-containing products, that same data  
11    could include relative percentages or amounts of  
12    drugs prescribed by a specific physician, for  
13    example; correct?

14            MR. KOBRIN: Object to form.

15     BY MR. BARTON:

16            Q.     It's transactional data of patients;  
17     correct?

18            MR. KOBRIN: Object to form. It's again  
19     beyond the scope of redirect, and it's beyond the  
20     scope of the discovery order number 8 in this  
21     case.

22     BY MR. BARTON:

23            Q.     Is that true? Transactional data  
24     collected by Giant Eagle, do you agree?

25            A.     Yes, it is.

1           Q.     And that's the same kind of data that  
2     you were charged with analyzing at times to  
3     provide reports when asked to provide reports;  
4     correct?

5           MR. KOBRIN:   Object to form.   Same  
6     objection as prior.

7           THE WITNESS:   Yes.

8           MR. BARTON:   No further questions.

9           THE VIDEOGRAPHER:   This concludes the  
10    deposition.   We're going off the record at  
11    5:04 p.m.

12                   (Whereupon, at 5:04 p.m., the taking of  
13    the instant deposition ceased.)

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1 COMMONWEALTH OF PENNSYLVANIA )

2 COUNTY OF ALLEGHENY ) SS:

3 C E R T I F I C A T E

4 I, Ann Medis, Registered Professional  
5 Reporter, Certified Livenote Reporter and Notary  
6 Public within and for the Commonwealth of  
7 Pennsylvania, do hereby certify:

8 That ROBERT ANTHONY MCCLUNE, the witness  
9 whose deposition is hereinbefore set forth, was  
10 duly sworn by me and that such deposition is a  
11 true record of the testimony given by such  
12 witness.

13 I further certify the inspection,  
14 reading and signing of said deposition were not  
15 waived by counsel for the respective parties and  
16 by the witness.

17 I further certify that I am not related  
18 to any of the parties to this action by blood or  
19 marriage and that I am in no way interested in the  
20 outcome of this matter.

21 IN WITNESS WHEREOF, I have hereunto set  
22 my hand this 30th day of January, 2019.

23

24

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Notary Public

25

1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
COUNTY OF ALLEGHENY ) S H E E T

2

3 I, ROBERT A. MCCLUNE, have read the  
4 foregoing pages of my deposition given on  
January 25, 2019, and wish to make the following,  
5 if any, amendments, additions, deletions or  
6 corrections:

6

Page Line Change and reason for change:

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19 In all other respects, the transcript is true and  
20 correct.

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\_\_\_\_\_  
ROBERT A. MCCLUNE

22

23 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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\_\_\_\_\_  
Notary Public

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